(XIV)
250

Bengal Tenancy Bill, with appendices

Year: 1884

Sub: Law and Legislation/Tenancy. Bill

Place: Calcutta

WEST BENGAL SECRETARIAT LIBRARY

BENGAL LIBRARY

OF THE GOVERNMENT OF BENGAL

ON THE

BENGAL TENANCY BILL, 1884.

WITH APPENDICES.

VOL. III.

Calcutta:
PRINTED AT THE BENGAL SECRETARIAT PRESS.
1884.

CONTENTS.

PAGE.

Letter of the Government of India, No. 5R, dated the 2nd January 1883, forwarding Minutes on the Bengal Tenancy Bill by the Hon. Sir R. Garth, Chief Justice, Messrs. O'Kinealy and Cuningham, Judges of the High Court, and Mr. A. Mackenzie, Secretary to the Government of India, in the Home Department 1

Sir R. Garth's Minute on the Bengal Tenancy Bill by the Hon. Sir R. Garth, Kt., Chief Justice, dated 6th September 1882 1

Mr. Justice O'Kinealy's Memorandum (without date) in reply to Sir R. Garth's Minute 13

Mr. Mackenzie's Memorandum, dated the 22nd December 1882 21

Mr. Justice Cuningham's Memorandum (without date) on the Bengal Tenancy Bill 28

Petition of Central Committee of Landholders to the Secretary of State against the Bengal Tenancy Bill, dated 17th November 1883 ... 37

Letter of the Government of Bengal, No. 152—38LR, dated the 15th January 1884, commenting on the Landholders' Petition 61

Mr. MacDonnell's Memorandum of 5th January 1884 61

High Court letter No. 3055, dated the 3rd December 1884, with Chief Justice's Minute of 13th September 1884, on the Tenancy Bill (II) 77

High Court letter No. 2612, dated the 15th September 1884, with Mr. Justice Field's Minute on the Tenancy Bill (II) 89

High Court letter No. 2760, dated the 3rd November 1884, with Mr. Justice Tottenham's Minute commenting on the Tenancy Bill (II) 124

High Court letter No. 2944, dated the 20th November 1884, with Mr. Justice Cuningham's Minute on the Tenancy Bill (II) 127

High Court letter No. 340, dated the 29th January 1885, with Mr. Justice O'Kinealy's Minute on the Tenancy Bill (II) 157

BENGAL SECRETARIAT LIBRARY

BENGAL TENANCY BILL, 1884.

VOL. III.

No. 5R, dated Calcutta, the 2nd January 1883.

From—T. W. HOLDERNESS, Esq., Offg. Under-Secretary to the Govt. of India, Revenue and Agricultural Department,

To—The Secretary to the Government of Bengal, Revenue Department.

I AM directed to forward, for the information of His Honor the Lieutenant-Governor, copies of the papers noted in the margin, on the Bengal Rent Bill, which have been written in reply to Sir Richard Garth's Minute on the subject.

Minute by Sir Richard Garth.
Minute by the Hon'ble Justice O'Kinealy.
Memorandum by Mr. Mackenzie.
Minute by the Hon'ble H. S. Cunningham.

Minute upon the proposed Rent Law for Bengal.

THE Judges of the High Court have been requested more than once by the Government of Bengal to state their views upon the proposed new Rent Law; and I regret, as things have turned out, that this request should not have been earlier complied with.

But to obtain anything like a collective opinion from the Court upon so large a subject would have occupied more time than the Judges had to spare; and I am afraid that individual Judges have, like myself, felt a disinclination to oppose what were generally known to be the strong views of Sir Ashley Eden in favour of the ryots, until those views had assumed something like a definite shape.

The Bill, as it was first drafted by the Rent Commission, differed in many important respects from that which has since been prepared by Mr. Reynolds; and we are now in still greater uncertainty as to what is really proposed, because we learn that Mr. Reynolds' draft was again materially altered before it was sent to the Government of India, and that it has now been submitted, with still further alterations, for the consideration of the Secretary of State.

It is true that through Sir Ashley Eden's kindness, which I gratefully acknowledge, I was allowed a perusal of the Bill before it left the Bengal Office; but as this was for my private information only, I do not feel at liberty to discuss it publicly any other shape than that in which it was presented to the public.

This method of dealing with important legislative measures, however much it may be in accordance with practice and precedent, is, I venture to think, inconvenient. It places myself and others, who may wish to discuss the provisions of the Bill in its latest phase, in a position of considerable difficulty, and it seems hardly fair to those classes of the community whose interests may be most seriously threatened.

The Bill, for aught we know, may now be submitted to the Secrtary of State in a form which the Bengal public have never seen, and upon which they have had no opportunity of making a single comment. In this form it will be discussed, and possibly approved, at the India Office; and if it is then sent back to this country to be dealt with in accordance with the views of the Secretary of State, it is clear that those classes whose interests it is calculated to injure may be placed at very great disadvantage.

It is therefore to be hoped that, under such circumstances, no attempt will be made to force the Bill unduly upon the Bengal Legislature, until the public have had a fair opportunity, after reading all that has been said about it both here and in England, of opposing such of its provisions as may seem to them unjust or inexpedient.

For myself, I should be only too thankful, if I felt that I could do so with propriety, to abstain from undertaking a most unwelcome task. I am always averse to measures which savour of confiscation; and if the questions at issue had merely been matters of State policy, unconnected with the law and its administration, I would gladly have left them to be dealt with entirely by the Government.

But these question, as I understand them, do for the most part directly concern the administration of the Rent Law. It is said that the Civil Courts have failed in many material respects to carry out the intentions of that law; and that the erroneous construction, which they have put upon it since the days of the Permanent Settlement, has, in conjunction with the mistakes of the Legislature, and the culpable neglect of the Indian Government, been the

means of upsetting the relations between landlord and tenant and necessitating a readjustment of those relations upon a proper and equitable basis. (See Mr. Mackenzie's note of the 31st of May 1880, paragraph 7.)

The re-adjustment which is proposed by the present Bill is, I gather, scarcely sufficient to satisfy the extreme views of certain members of the Rent Commission. But as even this re-adjustment is calculated to deprive the landlords, *unjustly* and *unnecessarily* in my opinion, of rights which the Courts of Law have always considered to be their due, it seems to me that I should not be doing my duty towards that section of the community if I refrained, upon mere personal grounds, from expressing my views upon the subject.

I lay special stress upon the word "*unnecessarily*," because in the numerous notes and minutes which this discussion has elicited, I find that some pains have been expended upon the argument that the Government, in case of necessity, has a right to interfere with vested interests, although created by so solemn a compact as that of the Permanent Settlement; and it has been further argued that, in the Settlement itself, the Government has expressly reserved such a power of interference.

For my own part, I consider this argument quite superfluous. I take it to be clear that any Government, *in a case of real emergency*, has a right, so far as it is necessary, to interfere with vested rights, to whomsoever they may belong, or howsoever they may have been created. But then I take it to be equally clear, that *without some such actual necessity*, no Government is justified in interfering with the vested interests of any class of its subjects, more especially when those interests have been created and defined, after due consideration, by the State's own legislative enactments.

I should have thought that these propositions would hardly have been disputed by the majority of reasonable men. The true question, as it seems to me, for our present purpose is whether there does or does not exist at the present time any such necessity as justifies the Government of Bengal in depriving the landlords in Bengal of their rights and privilges in the manner proposed by the new Rent Bill. For myself, I see no such necessity; and I am bound to say that, amongst the many complaints on behalf of the ryots, which have been published by the Government in connection with this subject, I have been unable to find a single statement that the ryots themselves desired anything of the kind.

The deprivation to which I allude, and the nature of which I will presently explain, was never, so far as I can ascertain, even suggested by the ryots. It was proposed, for the first time, by certain members of the Rent Commission; and it is supported, as I understand, not upon the ground of actual necessity, but because, in the opinion of those gentlemen, the ryots were, or ought to have been, in a better position some ninety years ago than they are now; and that it is desirable, in the interests of the State, to place them in that position.

Let us first see, then, what were the matters of complaint on both sides which led to the appointment of the Rent Commission.

The landlords complained principally of two things—*first*, that the machinery of the Civil Courts was not sufficiently effective to enable them to realize their rents in time to pay the Government revenue; and *secondly*, that either the provisions of the Rent Law were too strict or the construction which the Courts have put upon them too narrow, to enable the landlords to enhance their rents as readily and as largely as the Legislature had intended.

The complaints of the ryots were not so well defined. They appear to have been brought to the notice of the Government, not by the ryots themselves, but for the most part by executive officers, whose duty it was to quell the disturbances which arose from time to time in the agricultural districts and to inquire into the causes which led to them. I believe, however, that I am correct in stating that their principal matters of complaint, as disclosed in the published papers, were —

1*stly*—abuse of the power of distraint;

2*ndly*—illegal attempts to enhance rents and to enforce the measurement lands;

3*rdly*—the imposition of abwabs and cesses in violation of the law; and of

4*thly*—the refusal or neglect of the landlords to give proper receipts for rent, and their omission to keep regular accounts, which rendered uncertain the demands made upon the ryots, and give rise to constant litigation.

I fear it is only too true that there were much reason, especially in certain parts of the country, for these complaints; and no one is more anxious than I am to see any real grievances, which are *bonâ fide* subjects of complaint on either side, fully and effectually redressed. I consider that many of the provisions proposed in the new Bill are extremely wise and useful and calculated to effect great improvements. I believe that other provisions, which I shall suggest presently, would effect still further improvements; and I gratefully acknowledge that we are all much indebted to the Rent Commission, and especially to my good friend and colleague Mr. Justice Field, who has had the largest share in the working it, for the pains and attention which they have bestowed upon the subject.

But whilst I yield to no man in the earnest wish to see all necessary and wholesome reforms carried out, I confess I view with horror and dismay the revolutionary provisions of the present Bill. It appears to me absolutely cruel to sacrifice wantonly and unnecessarily the rights of one section of the community for the supposed benefit of another; to violate laws and usages which have been sanctioned by the Courts and the Legislature for nearly a century; to uprip a solemn settlement of vexed questions, which was made by the Bengal Legislature no later than twenty-three years ago; and all this not for the purpose of meeting

any actual complaints, or rectifying any proved abuses, but merely to place the ryots in a position which certain well-meaning, but as I think mistaken, members of the Rent Commission imagine that they occupied in the year 1793.

The changes to which I particularly allude, and which appear to me especially unjustifiable, are the following:—

1st—the unwarrantable extension of the right of occupancy as settled and defined by the Act of 1859;

2nd—the arbitrary limits now sought to be imposed for the first time upon the enhancement of rents;

3rd—the proposed rules in Chapter V to control the letting of land for building purposes;

4th—the transferability of ryoti tenures without the consent of the landlord;

5th—the exemption of occupancy tenures from being sold in execution for the debts of their owners; and

6th—the retrospective effect which is given to some of the proposed enactments; entirely in favour of the ryots and against the landlords.

These changes, I repeat, were never asked for by the ryots before the appointment of the Rent Commission. They are the result, as far as I can ascertain, of certain extreme views which have been adopted by two of the younger members of that Commission; and I must add that the ground (if it is worthy to be called by that name) upon which the authors of the Bill pretend to justify their interference with the rights of the zemindars appears to me about as transparent a pretext as ever was presented to the public.

It is said that as the zemindars are asking for a reform of the law in their own favour, the Government is justified, whilst redressing their grievances, in readjusting the whole law of landlord and tenant for the last ninety years. Why they might just as well say that because the zemindars were to ask the Government to enforce their rights more effectually under the Permenant Settlement, the Government would be justified in reviewing that Settlement, and readjusting its terms altogether.

What the zemindars of Bengal now ask is nothing more than to have their present undoubted rights duly enforced. They want no new privileges, and they certainly ask for nothing which the Rent Law of 1859 did not intend to give them. They only want due payment of their rents, and such an enhancement of them from time to time as the Rent Law intended to allow. And how does this justify the Government in going behind the Act of 1859, and taking away from the landlords the rights which that Act gave them? No.; if it is necessary, as a matter of public policy, to deprive the landlords of their rights, let us at least be honest about it, and say so; but don't let us attempt to thrust such a blind pretence down the throats of an intelligent people.

At the same time, I beg it may be undertsood that it is very far from my wish to undervalue either the labours or ability of the two gentlemen to whom I have alluded. They are both, I am happy to say, very good friends of mine; they have, in this and many other ways, been extremely useful to the Government: and I have not the least doubt that they sincerely believe in the fairness and correctness of the views which they advocate.

But when we consider that *upon the strength of those views* it is now seriously proposed to deprive the landowners of this Province of rights and privileges, which they have enjoyed for nearly a century; to relegate them to a position far inferior to that which they occupied before the Permanent Settlement; to unsettle, and re-establish upon an entirely new footing, the relations between landlord and tenant; and to upset a settlement of those relations which was arrived at in 1859, and confirmed ten years later by another Act of the same Government, I think that the Bengal public has at least a right to enquire upon what authority those views are founded, and how far they are consistent with the opinions of the many distinguished men who, as judges, statesmen and legislators, have administered and explained the law during the past ninety years.

And in answer to this enquiry, the public may be surprised to learn that, as to some of the proposed changes, they are based upon no authority at all; as to others, that the views of these gentlemen are founded upon their own construction of the Regulations of 1793 and the Act of 1859,—entirely without regard to the construction which has been put upon those enactments by the Courts of Law and the Legislature; and as to all, that their views are not only inconsistent with the opinions and the policy of the last three generations, but with the laws and usages which have prevailed in Bengal since the time of the permanent Settlement.

And as I understand Mr. Mackenzie's note of the 31st May 1880, he very candidly avows this to be the case. We find in paragraph 7 of that note the following passage:—

"Leaving, then, Mr. Harrison's note of the 6th March 1880 to be read with Mr. O'Kinealy's elaborate examination of the true relation of landlord and tenant in Bengal, *before our legislation and our case law, assisted by the culpable neglect of our Government upset it*, I pass on to notice very briefly Mr. Harrison's earlier note," &c.

Now Mr. O'Kinealy's elaborate examination of the relation of landlord and tenant, which is here referred to, is to be found in that gentleman's note of the 16th June 1880, in which, after reviewing what he considers to have been the law before the year 1793, he proceeds to place his own construction upon the language and meaning of the Permanent Settlement, and to explain his views of the law as amended by it. Mr. Harrison's note of the 6th of March is one in which that gentleman had ventured to disagree with

Mr. Mackenzie, and the legislation and the case law, which are thus trampled under foot by Mr. Mackenzie and the Government, which he says has so culpably neglected its duty, are no other than the legislators, judges and statesmen, who from time to time have expounded and enunciated the law since the days of the Permanent Settlement, and who are unfortunate enough to have differed in opinion with Mr. Mackenzie.

And when Mr. Mackenzie finds fault with these eminent men for having "*upset*" (as he calls it) the relations of landlord and tenant in Bengal, it may perhaps be a question with some of us, who entertain any respect at all for the wisdom and experience of our forefathers, whether what they upset was really the relation of landlord and tenant, or only Mr. Mackenzie's views upon that subject.

The question, when one looks at it seriously, becomes really one of authority. Which is right—the distinguished and learned men on the one hand, who have, according to Mr. Mackenzie's ideas, upset the proper relations between landlord and tenant, or Mr. Mackenzie and Mr. O'Kinealy on the other?

I have always been under the impression that the proper construction of a legislative enactment is in this, as in most other countries, a matter *primâ facie* to be determined by the Courts of Law; and if the Courts of Law give a meaning to it which the Legislature or the Government did not intend, it is then the duty of the Government, with the assistance of the Legislature, to set them right by passing some amending measure.

But when we find that the construction which courts of law put upon the Permanent Settlement was approved by the Legislature and the Government, it certainly looks very much as if that construction were the one which the Government had originally intended. And moreover, when the legislature in the year 1859 accepted their interpretation of the law and framed the Act of that year in accordance with it, it seems to me that the weight of authority in favour of that interpretation is almost overwhelming; and the more so, when we remember that, in the year 1869 after the Government on the one hand, and the agricultural community on the other, had made trial for ten years of the working of the Act of 1859, another Act was passed, which, instead of altering that law, confirmed it in all material respects.

No doubt, as against this weight of authority, we have the opinions, expressed with considerable confidence, of Mr. Mackenzie and Mr. O'Kinealy. The public are not at present informed of Sir Ashley Eden's views, although we are led to believe that he is generally in favour of the ryots; and Mr. Reynolds' opinion, if they are to be gathered from his memorandum on the Rent Bill, are also in the same direction; but I have not found any authority in favour of the extreme, and in my humble opinion erroneous views, which are expressed in Mr. O'Kinealy's note, and with which, as I understand, Mr. Mackenzie substantially agrees.

And as we are now upon the question of authority, it is right to say that as regards the proper construction of the Permanent Settlement, the views of Mr. Mackenzie and Mr. O'Kinealy are in many material respects opposed to those of other members of the Commission. Mr. Dampier, the President, Mr. Harrison, Mr. Field, Babu Peary Mohun Mookerjee, and Babu Mohini Mohun Roy. The last-named gentleman has been for many years one of the most learned and eminent pleaders of the High Court, thoroughly conversant with all the details of the Rent Law; and both he and Babu Peary Mohun Mookerji are zemindars of large property and experience, and were selected, I believe, for that reason, as members of the Commission.

Mr. Mackenzie, I regret to find, (in his remarks upon the report of the Committee, dated the 23rd May 1880,) speaks rather disparagingly of these native gentlemen for taking what he considers a one-sided view of the subject, and contending too strongly for an adherence to the policy and principle of the Act of 1859. But I must say it seems to me that this was on their part, under the circumstances, a very justifiable contention. By the Acts of 1859 and 1869, the relations of landlord and tenant had been settled by the Bengal Government, and upon the faith of that settlement many thousands of estates had been purchased by the zemindars, and many lakhs of rupees expended upon those estates. These gentlemen were therefore surely justified in opposing any invasion of their rights, as settled and confirmed by those Acts; and the onus would seem to lie upon those who would counsel such an invasion to shew that it was necessary or justifiable.

Mr. Mackenzie has mentioned, I observe, one particular instance in which these native gentlemen proposed to amend a provision in the Act of 1859, which in their opinion operated unjustly against the landlords, whilst in other respects they were insisting upon a close adherence of the terms of that Act. But Mr. Mackenzie has forgotten to mention that this amendment was not proposed by the native gentlemen, until other members of the Committee had resolved to violate, in many important respects, the policy and principle of the Act; and I am afraid that some others of the Committee were at least as much open to the charge of being one-sided as the native members. I have taken the pains to go through all the minutes of the Committee meetings, and I find that out of some thirty-five divisions which took place, *Mr. O'Kinealy in every single instance voted in favour of the ryots and against the landlords*, and Mr. Mackenzie did so in almost every instance.

So much, then, for the question of authority. I am aware that some of my readers may think that what I have said on that subject is so much waste paper. Those who think that, in construing a legislative enactment which was passed some ninety years ago, they are at liberty to read it in their own way, and according to their own lights, without considering what construction has been put upon it by judges and statesmen during the intervening period,

will naturally attach little weight to the arguments I have used. Those who think that the construction thus put upon the Permanent Settlement was in truth a subversion and upsetting of the relations between landlord and tenant which that Settlement intended to establish, will probably regard my argument in the same light.

But I trust there are others who will take a different view—who, like myself, have a due respect for the wisdom and experience of the past, and who would deem it nothing short of presumption to denounce a construction which has been put upon the law for the last eighty years as rank heresy. I trust, indeed, that even my friend Mr. O'Kinealy, when he becomes, as I hope he will before long, a permanent member of the High Court, will have learned by that time to have some little respect for authority and precedent, and will not then forget, what he seems to have forgotten when he wrote his note, that most admirable maxim in the construction of an ancient statute, "*Contemporanea expositio est optima et fortissima in lege.*" (2 Coke's Inst. 11.)

But even to those who disagree with me upon this question of authority, who know nothing and care less about legal maxims, and who think that the present generation should be guided entirely by their own bright lights without regard to the wisdom of the past,—even to these I would say—Is no respect or weight to be attached to the solemn Acts of the British Government? Are measures of State, which have been passed by one Lieutenant-Governor of this Province, and confirmed by another, to be lightly set aside by a third, because he thinks that a law, which was passed ninety years ago, has been misunderstood by the Courts of Law and the Government? If so, I should like to ask what security have the public that ten years hence another Lieutenant-Governor may not arise, who will take another view of the question, and cause another grand revolution?

One very remarkable feature of the new Rent Bill, as evidencing what appears to me the one-sided-character of many of its provisions, is that the principle for which I have just been contending, although entirely ignored in the interest of the landlords, has been carefully respected in the interest of the ryots. I will give only two instances of this by way of illustration.

By section 4 of the Act of 1859, it is provided that if the rent of the land held by a ryot has not been changed for twenty years, it shall be presumed, in the absence of evidence to the contrary, that the land has been held at that rent from the time of the Permanent Settlement.

Now, this section has, undoubtedly, operated very unjustly against the landlords. The native members of the Commission were perfectly justified in objecting to it for that reason. The section defined by a statutory rule, a presumption which had previously been left to the discretion of the Courts; and the period fixed, namely twenty years, is, in some cases, and for some purposes, a reasonable time enough. Thus the enjoyment of an easement over another man's land for twenty years has been properly considered sufficient to confer a right, because the servient owner must, or ought to, have known all that time of the exercise of the right, and had ample opportunity of questioning it.

But in the case of rent, it might well be that for twenty years no ground for enhancing it had ever occurred; or, from the fact of the landlord being a minor, or a female, or over-lenient with his tenants, any opportunity for enhancement might not have been taken advantage of; and in such cases it was, no doubt, hard to presume against the landlord that because the rent had not been enhanced for twenty years it *had been fixed from the time of the Permanent Settlement.*

The Rent Commission decided, apparently without discussion, that no alteration should be made in this section; but the question was again mooted when the Bill came before Mr. Reynolds; and after a good deal of consideration it was determined that a much longer period should be fixed for the presumption. I understand, however, that this has since been negatived upon the ground that, however hardly section 4 might have operated upon the landlords, it has now been in force for twenty-two years; that tenures have been bought and sold during that time as being held at fixed rents; and that it would be contrary to principle to re-open the question by altering the law as to the period of presumption. Here, it will be seen, the very principle which has been altogether ignored in the interest of the landlord, has been acted upon in the interest of the tenant.

Another remarkable instance of this is in the matter of subletting. It is agreed on all hands, even by those who are most favourable to the ryots, that to allow them to sublet is an undoubted evil; and that it would be far better, in the interests of the ryots themselves, to prevent subletting altogether. But the argument, and the only argument, in favour of it is that the custom of subletting is very general and has existed for many years: and upon the strength of that argument a power of subletting is proposed to be allowed to all occupancy ryots.

Now speaking for myself, I am quite of opinion that notwithstanding the injustice done to the landlords by section 4 of the Act of 1859, it is right to adhere to that section, because its provisions have been in force for twenty-two years, and a large number of estates have been bought and sold upon the strength of it; and I am also of opinion, for the same reason, that subletting has become so general in Bengal, as a matter of usage, that it would be inconvenient, and perhaps unjust, to disturb it. But then I think it equally unjust that the principle thus acted upon in the case of tenants should be ignored in the case of landlords. They have purchased and dealt with their properties in accordance with the present law for nearly a century; and they are now to be deprived of their rights and privileges without the least regard to the price which has been paid for them, or the time during which they have been enjoyed.

Let us now consider, one by one, the proposed changes to which I have referred, and see how far they can be reconciled with justice and sound policy.

And first, as to that most important change of all, the extension of the right of occupancy.

By the draft Bill proposed by the Rent Commission, the twelve years' right of occupancy, as defined by the Act of 1859, was adhered to; and it will be a great satisfaction to those who, like myself, have a due regard for vested interests, that it was adhered to by a majority of the Committee upon the ground that the law which had been in force for twenty-two years ought not to be disturbed.

But it was proposed in section 26 that a ryot, who had held for three and less than twelve years, should not be evicted by his landlord otherwise than for non-payment of rent, for the breach of some condition in his lease, or for his refusal to pay any enhanced rent that might be demanded of him; but that if he where evicted on the last-mentioned ground, he should be entitled by way of compensation to one year's enchanced rent at the rate demanded.

This last provision, be it observed, had never been asked for by the ryots; and it was, as we are now informed, almost universally condemned by the officers who were consulted upon the subject. It was, therefore, abandoned in Mr. Reynolds' Bill.

Then why was the twelve years' rule, which was settled by the Act of 1859, confirmed by the Act of 1869, and adhered to by the majority of the Rent Commission—why, I say, was this rule set aside? Who suggested the idea of a settled ryot as embodied in the 19th section of Mr. Reynolds' Bill? Why should the ryots have privileges accorded them in the year 1880, which they never possessed at any previous period, and which, it is clear, cannot be conceded to them without doing great injustice to the zemindars? I am afraid that the only answer to these questions, however unsatisfactory it may be to the zemindars, is that the views of Mr. Mackenzie and Mr. O'Kinealy found favour with Sir Ashley Eden.

We are told in Mr. Reynolds' memorandum on the Rent Bill, page 7, that the Government of Bengal had "already accepted the principle that the occupancy right ought to be given to the great mass of settled cultivators." But then comes the question, the importance of which it is impossible to overrate,—what is the true meaning of a "*settled ryot*"?

I suppose that no man with any decent share of modesty would undertake to define at the present day what was the exact status or qualification of a settled or khodkast ryot in the year 1793. Even Mr. Mackenzie, who is by no means shy of expressing his opinions, says in his note of the 6th January 1880—"I have already admitted that it is perhaps at the present day impossible and useless to attempt to rehabilitate the khodkast or resident ryot *totidem verbis*."

But although it may now be impossible to define the qualifications of the settled ryot, I should have thought that the boldest advocates of ryoti rights could hardly have accepted the definition of a settled ryot in Mr. Reynolds' Bill as fairly representing the idea of a settled ryot in 1793. It seems almost impossible to imagine that a man who took up his residence in a village on one day, and acquired land in it the next, became at once a *settled* and *resident ryot* of that village in the proper acceptance of the term.

The word "*settled*" *ex vi termini* seems to point *to some permanent and established status of settlement or residence*; and when we consider the expression as explained by Mr. Shore's minute, by the "directions of the Government to Settlement Officers," by the extracts from Harington's Analysis, and by the other authorities which are quoted in Mr. Field's note of the 13th May 1880, I should have thought that no reasonable man, and certainly no lawyer, could entertain any doubt that the permanent title which a man gained in those days to village lands by becoming a settled ryot, *depended in some degree upon prescription*.

Mr. Shore distinctly calls a right of a khodkast or settled ryot a "*prescribed title*." He says to "require that pattas should be given *would diminish the force of that prescription, which has established a right of occupancy in favour of ryots*." And again, "it is understood that the ryots *by long occupancy acquire a right to the possession of the soil*."

Unless these and other high authorities are absolutely ignored, it seems to me vain to contend that the title of these ryots was not founded in some sort upon prescription; and if it was, then the term of twelve years, which was fixed by the Act of 1859 as necessary to confer the right, was about the shortest period of prescription known to the law. In the year 1793, twenty years was the usual period of prescription, and until very lately twenty years was the period in England. But in this country an adverse period of enjoyment for twelve years only has been sufficient for some years past to establish a title; and it was probably with a view to that law, as well as for other reasons, that the twelve years' rule was fixed by the Act of 1859. I believe it will be found that in no country in the world can a prescriptive title be gained in any shorter period.

The ryots therefore had, as it seems to me, every reason to be well satisfied with that settlement of their rights. It did not affect the titles of those who, by custom or otherwise had acquired a permanent interest before the Act passed. It did not affect the right of ryots to establish, by custom or otherwise, a permanent title in any other way. It only fixed the period of prescription, which in the case of village ryots had previously been unsettled, and a constant source of dispute with the zemindars, upon a certain and definite basis, as favourable to the ryots as any rule of prescription in the world; and it admittedly conferred upon the pyekast ryots a privilege that they had never enjoyed before.

It is for these reasons that I stated my conviction in a former minute, that the law of 1859, however wise and politic it may have been, operated at the time as an infringement of the landlords' rights as conferred by the Permanent Settlement, and having now read all the

papers which have been published by the authority of the Government, I am still of the same opinion. Of course, if I could accept the view which appears to be entertained by some gentlemen, that a man became a "settled ryot" the moment he acquired a residence in a village, I should think differently; but it appears to me that this view is neither consistent with reason nor supported by authority.

And here it may be convenient to notice a point that I find has been referred to by Mr Reynolds and other gentlemen, more particularly by Mr. Edgar, in his interesting paper upon customs in Behar.

A passage has been quoted from a judgment of Sir Barnes Peacock, to the effect that the occupancy right conferred upon ryots by the Act of 1859 does not interfere, and was not intended to interfere, with any similar rights which might be established by custom. And I believe there is no doubt that such was the law. In accordance with this view we are told by Mr. Edgar and other gentlemen that ryots in many parts of the country consider that they are holding *by a customary tenure*, and repudiate altogether having acquired any rights under the Act of 1859. And yet it is said that High Court Judges have constantly affirmed, that practically at the present day, there is no other occupancy right set up or recognized in the Civil Courts than that which was conferred by the Act of 1859.

I believe these propositions are both perfectly true, and certainly they are easily reconciled. Since I have been in Calcutta, I have had many hundred cases before me from all parts of the country, in which occupancy rights have been set up, and I do not remember one of them in which such a right was sought to be established by custom. And the reason to a lawyer is plain enough. These poor people, the ryots, know no difference between *custom* and *prescription*; in fact, they probably have no word in their language which signifies "prescription." If they were claiming a right of way or a right of drainage, they would claim it in common parlance as a "customary right," although, in point of law, the right might not be claimable by custom. A right to these easements, like a right to land, is, in the absence of express grant, almost always claimed by prescription, although in this country the provisions of the Limitation Act generally render it necessary to set up a prescriptive title.

The Lords of the Privy Council decided only a short time ago that the twenty years' title to easements which is given by the Indian Limitation Act does not prevent a man from setting up a similar right by any means which was open to him before the Act passed, and yet it rarely, if ever, occurs in practice that such a right is claimed otherwise than under the Act. And so the same way any pleader in Bengal who knows his business, and who is claiming an occupancy right for his client, would almost, as a matter of course, try to establish it under the twelve years' rule, because that is the simplest and most easy mode of effecting his object. If there did in fact exist now, or if there had existed in 1859, any customary right to land by which ryots could have proved a permanent title by an enjoyment of less than twelve years, the Civil Courts would surely have heard of it long before this.

It seems indeed extremely probable, having regard to Lord Cornwallis and Mr. Shore's minutes, that the period of prescription differed at that time in different parts of the country, and that a length of residence, which was sufficient in one district or estate to entitle a ryot to a permanent interest, was not sufficient in another. It seems also probable that after the Permanent Settlement the zemindars took advantage of the liberty of contract which they acquired under that Settlement to break in upon existing customs by requiring those who took their lands to enter into written engagements upon special terms as to rent and duration of tenancy. They would naturally have wished then, as they do now, to keep the control of their property as far as possible in their own hands.

I have no doubt also that one consequence of the Sale laws, as Mr. Mackenzie observed, was to deprive ryots from time to time of their occupancy rights; and probably these two causes combined had the effect of greatly diminishing the number of those who would otherwise have had permanent holdings.

This and the arbitrary manner in which rents were enhanced by the zemindars led to the passing of the Act of 1859. I have no doubt that this Act was much needed, and that its provisions, although they seriously restrained the power of the zemindars and conferred rights of occupancy upon the ryots, which they had great difficulty in acquiring before, were in the main wise and just. I quite agree, also, that in some respects the provisions of the Act now require amendment; and as I said before, I believe that many of the provisions of the new Bill will prove extremely beneficial. But why the Government, who now have it in their power to introduce a moderate measure, which would remedy all just causes of complaint and prove a source of peace and conciliation to all classes, should go out of their way to propose a law which must ruin the zemindars, and create a frightful amount of ill-feeling and litigation, I confess I am at a loss to understand.

Let us now consider what would be the probable effect of Mr. Reynolds' Bill as regards the right of occupancy. (I am obliged to refer to this Bill, because I do not feel at liberty to discuss the measure in its more advanced stage, and I do not know in what form it has been submitted to the Secretary of State.)

By sections 18 and 19 every ryot who resides within two miles of his jote is to obtain at once a right of occupancy in it; and any additional jotes that he may acquire within two miles of his residency, he will hold in the same right.

By section 21 he may transfer or devise these jotes to any one he pleases, without the consent of his landlord.

By section 3 the status of a ryot is defined. He need not be himself a cultivator, nor know anything of cultivation. So long *as he takes his land for purposes of cultivation*, he may

sublet it to whom he will, or cultivate it by a servant or manager; and so long as at the time when he acquired his jotes he was a "*settled ryots*," he may afterwards change his residence and live a hundred miles away, without losing his right of occupancy.

Furthermore, by sections 21 and 22 he is only liable to pay a fair rate of rent the amount of which is controlled by other provisions of the Bill, and which cannot exceed, in the case of money-rents, 25 per cent. of the average gross produce of his land.

And he has also this extraordinary advantage over the rest of the Public—that, let him incur debts to any extent, and ever so recklessly, his occupancy right is protected by law from being taken in execution.

A man who is fortunate enough to possess himself of some four or five hundred bighas of land upon these terms will, indeed, be pretty comfortably off; and still more so, if having secured his farm of 500 bighas by a residence in village A, he goes off and does the same in village B, and so on in other places. He will certainly have a far better position to the extent of his area than any zemindar or tenure-holder, and an infinitely better one, than the most favoured of our tenant farmers in England.

The rent of a tenant farmer in England varies, I believe, as a rule, from ⅔ths to ¾ths of the average value of his gross produce; and out of his own share of that produce, he has to pay tithes, rates and taxes, except land tax; he has to provide horses and carts; to pay his laborers; to keep his farm buildings in repair; and either to purchase manure, or sacrifice a considerable part of his farm-produce in making it. And yet such a tenant farmer has rarely an interest in his land beyond fourteen years; he is often a tenant from year to year: he can never acquire an occupancy right; and, as a rule, he has no power to transfer or sublet his interest without the consent of his landlord.

What would not an English tenant farmer give for such an interest as a so-called occupation ryot would acquire under Mr. Reynolds' Bill? A permanent right in the soil, transferable and divisible at pleasure; his rent often much less and never more than ¼th of the gross produce of the land; no tithes, rents, or taxes to pay, except road-cess; no expensive carts and horses; no barns of farms buildings to keep in repair; a soil renewed and fertilised every year by the rains; with no manure required, and a very small modicum of labour.

According to the figures given in paragraph 29 of Mr. Reynolds' last note (28th April 1881), the net profits of such a ryot would be nearly at least ¾ths of the value of the gross produce of his land, even though he pays his landlord the extreme limits of rent proposed to be allowed by the law, namely, 25 per cent. of the gross produce.

On the other hand, what will be the position of the landlord under this Bill? He is deprived of the power of disposing of his land at the best price he can get. He cannot choose his own tenants, because the ryot, to whom he lets, can transfer the land to any one he pleases; he has no longer any interest in the improvement of his property, and the only advantage he has from it is the rent, which at most is 25 per cent. of the value of the gross produce.

And then consider what has to be paid out of this 25 per cent. In the first place, the Government revenue; in the next, irrigation and embankment rates; in the next, collection charges; and the residue, small as it may be, will generally have to be divided between the zemindar, and perhaps three or four tenure-holders who intervene between him and the occupancy ryot.

Under these circumstances the sooner zemindars and tenure-holders can place themselves in the position of the occupancy ryots, the better for them. They have no right, under the Act, to take their own ryoti land into cultivation, nor to buy up occupancy rights in their own estates or tenures; but they may take their neighbour's ryoti lands and cultivate them by their servants or sub-tenants; and they may buy up, to any extent they please, their neighbour's rights of occupancy.

Now my object in drawing this comparison is two-fold. I wish to show—

1st.—How entirely the landlords will be deprived by the proposed Bill of their former rights and position; and how little interest they will have for the future in the welfare and improvement of their property; and

2ndly.—How completely the class of persons who in the future would hold the status of the occupancy ryot, would have the advantage, both as regards profits and control, over all others interested in the land. The profits and the power which you are taking from the landlord you are giving to the occupancy ryot; and the liberty of contract, which you think it is unsafe to entrust to the highest and best educated noblemen in the province, you are committing with the utmost confidence to the class who will fill the status of occupancy ryots

And now, what will that class be? Why, with all these advantages, the interest of an occupancy ryot must be a very valuable one, and it will be sought after accordingly. Here we may look to some slight compensation to the landlords for the rights of which they will have been deprived. The more valuable these occupation holdings, the more they will be the objects of competition; and the lower the rent the higher the premium which the landlord may hope to obtain for any jotes that he has to dispose of.

And is it at all likely that *bonâ fide ryots*, the poor cultivators of the soil, will be able to purchase rights of this description? Will the mahajuns and the land-jobbers, the tehsildars and irjaradars allow chances of this kind to slip through their fingers? This consequence has, I see, been already pointed out by many of the officers who have been consulted upon the Bill, and we may be assured that, if it passes, the speculators and the land-jobbers will soon be buying up

all the occupancy rights. And what will then be the condition of the actual cultivators of the soil? I believe that the very best thing that could happen under these circumstances to the cultivating ryots, would be that the wealthy zemindars or their friends should themselves buy up the occupancy rights. It would probably be the wisest thing they could do; and they would doubtless, as a rule, prove far more lenient and considerate landlords than a set of men who have no position or character to lose, who have had little or no education, and who would buy up these rights for the very purpose of screwing the last pice out of the cultivating classes.

For these reasons I venture to think that the proposals of the Government with regard to the right of occupancy will not only be cruelly unjust to landlords, but will operate most injuriously to the very class which it is intended especially to benefit. You may change the law, but you cannot change human nature, nor secure the most valuable rights for the poorest class of the community. If the lot of the ryot is a hard one now, you may be sure that it will be still harder if Mr. Reynolds' Bill should pass into a law.

2nd. I now come to the arbitrary limit proposed to be placed for the first time upon the enhancement of rents. And here I would observe in the first place, that I have not the least objection to the provisions made in the Bill for the adjustment of rents from time to time by the executive authorities. On the contrary, I believe that those provisions are entirely in accordance with the spirit of the Permanent Settlement, and that the difficulties which the Courts have experienced in assessing the proper rates of rent in enhancement cases, render it most desirable that a measure of rent, corresponding to the old pargana rates, should be ascertained in all parts of the country with the least possible delay.

But those rates, in my opinion, ought only to be enforced in the case of occupancy ryots, and of non-occupancy ryots in the absence of any agreement to the contrary.

Meanwhile, what I do object to is the imposition of an arbitrary limit of 50 or 25 per cent., as the case may be, which is to prevail in all cases and under all circumstances, and is to coerce the discretion of the Collectors in fixing the general rates.

Perhaps there is not so much objection to the limit of 50 per cent in the case of rents in kind as to 25 per cent. in the case of money-rents; but even as regards the 50 per cent., it is clear from the published evidence that there are many instances where the ryots are glad to give a larger percentage, and where it fully answers their purpose to do so. There are many localities where the outlay of the ryot is small, and the crops are often extremely heavy; and as the landlord runs the risk of getting nothing for his land in bad seasons, it seems only reasonable that in good seasons he should be compensated to such an extent as the ryot is willing and can afford to pay. If the Collector is competent to assess the rents generally, and his assessment is subject to revision by the Revenue Board, the amount of the assessment might safely be left to his discretion, without the Legislature imposing any arbitrary limit.

But as regards the 25 per cent. in the case of money-rents, it appears to me to be not only unjust, but contrary to the principles and authority upon which these changes in the law are justified by the Rent Commission.

It will be remembered that before the Permanent Settlement the jama payable by the ryot to the Government was a certain proportion of the gross produce of the land. This proportion appears to have varied at different periods and in different districts; but in the extract from the 5th Report, which is quoted in paragraph 34 of Mr. O'Kinealy's note, I find the rule of proportion is laid down as follows:—

"By this rule the produce of the land, whether taken in kind, or estimated in money, was understood to be shared in distinct proportions between the cultivator and the Government. The shares varied when the land was recently cleared, and required extraordinary labour; but when it was fully settled and productive, *the cultivator had about two-fifths and the Government the remainder.* The Government share was again divided with the zemindar and the village officers in such a proportion that the zemindar retained no more than about $\frac{1}{10}$th of this share, &c."

Taking this, then, to have been the general rule at that early period, I presume there is no doubt that by virtue of the Permanent Settlement the zemindar, by his bargain with the Government, became entitled to the Government share of the produce. He took all risks of this share being duly realized; he was bound in any event to pay the Government revenue; he had to pay all collection charges and other sums which therefore had been paid by the Government; and he was entitled to the residue of the rent, when he had secured it, for his own profit.

Now the Rent Commission, as I understand, are desirous of restoring this state of things—and if so, one does not quite see why the zemindar's share of the produce which in former days amounted to $\frac{3}{5}$ths should now be reduced to $\frac{1}{4}$th; and it is difficult to understand why a landlord who receives his rent in kind should receive double as such landlord who received it in money. That difference assumes that in the average of years $\frac{1}{4}$th of the value of produce in the case of money-rent is equivalent to $\frac{1}{2}$ of the produce in the case of rent payable in kind.

This surely is most unreasonable. The truth is that any arbitrary limit is sure to lead to injustice; and one would have thought that the Government might well repose sufficient confidence in the Collectors and Revenue Board to dispense with any hard-and-fast rule.

3rd. I now come to the third change in the law which I consider objectionable, namely, the chapter which relates to the letting of land for building purposes.

What possible reason is there for the Government to interfere in this matter? It has nothing to do with the Permanent Settlement, or with what is generally know as the Rent Law, or with cultivating ryots or their rights. If there is one thing more than another in which a landlord should be allowed to exercise his own discretion it is in letting his land for building purposes. It seems to me that you may just as reasonably dictate to a tradesman upon what terms he is to sell his goods, or to a banker at what rate he is to lend his money, as to create

occupation rights in land let for building purposes, and to lay down rules for enhancing the rent of it.

And again, why should a man, who takes a house or a cottage as tenant-at-will or from year to year acquire any permanent right in it, because he is allowed to hold it for twelve years? The principles upon which the occupancy right is founded are wholly inapplicable to land let for building.

My good friend Mr. Justice Field, in his note upon this subject (24th December 1879), has, I think, rather missed the point in one of the cases which he quotes (I. L. R. 3, Calcutta, 696). In that case the defendant and his predecessor had undoubtedly occupied the same house for a great many years; but it was found, as a fact, by the Munsiff, that neither the defendant nor his ancestors had built the house, and the Subordinate Judge apparently did not disagree with that finding. There were no grounds whatever, except the length of the tenancy, for supposing that the land had been let otherwise than at will; and it was accordingly held that the Subordinate Judge was not justified in deciding, as a matter of law, that the tenancy was a permanent one.

In cases where there has been any ground for presuming a permanent tenure, as for instance when the tenant on being let into possession has laid out money in erecting buildings, or where a premium has been paid by the tenant, or where any other good reason is shown for the belief that the land was originally let for building, the Courts are always in the habit of presuming a permanent tenure, and the High Court have often directed them to do so as a matter of law

It is difficult, of course, to lay down any invariable rule in such cases. Each case must be governed by its own circumstances. But there certainly seems no justice in enacting that where a man has a house let to him as tenant-at-will, and he is allowed to live there for twelve years, the law should convert his tenancy-at-will into a permanent holding. It is difficult to see in such a case what the landlord has done to deserve such a punishment, or what the tenant has done to deserve such a reward.

The provisions of Chapter V, if they were allowed to stand, would prove an injury, rather than a boon to those whom they are intended to benefit. Any landlord in his senses would at once look round his estate, and either eject or come to fresh terms with all the tenants upon it who were likely to obtain an occupancy right. I understand that these provisions are generally objected to, and I trust that the Government will see their way to withdrawing this chapter altogether.

4th. My next objection is to the proposed transferability of occupancy tenures without the consent of the landlord. For this proposal, so far as I know, there is no authority whatever. Such tenures have never yet been transferable except by special custom, and such a custom is very rarely proved. I have known it repeatedly attempted in the Mofussil Courts, but very seldom with success.

It is obvious that to landlords the proposed measure would be a serious injustice. It would deprive them of the privilege which they now possess of selecting their own ryots; and it would be the means of introducing upon their property, against their will, either rival zemindars or objectionable tenants. It would also deprive them in a great many instances of a legitimate source of profit, which lords of manors in England very generally enjoy in the case of copyholds, namely, the right of enforcing payment of a reasonable fee upon any alienation of a tenure. The small fee provided by the Bill is quite inadequate for this purpose.

There is no justification for this concession to the ryot by reason of any usage of former times. It is not pretended that such tenures were transferable at the time of the Permanent Settlement; and the sole ground, as far as I can understand, upon which the proposal is now based, is that the quality of transferability will make the tenures more valuable.

But it must be borne in mind that the value thus given to the tenant is a corresponding loss to the landlord; and even to those who have no regard whatever for the landlord's rights, it may still perhaps be worthy of consideration whether the value thus conferred upon occupancy tenures will be any benefit to actual cultivators.

I have already explained—I hope to some purpose—that the more valuable you make occupancy rights, the less likely the cultivating classes will be to acquire them. But there is this further point to be considered as regards transferability—To a speculator or a land-jobber the transferability of the tenure would no doubt add greatly to its value; but would this be so to the settled or resident ryot, whom it is the object of the Government to benefit? If the owner of the tenure is a settled ryot, and takes his jote for purposes of cultivation, he would not require to transfer it; and the probable effect of making it transferable in the hands of such a man would only be to offer him a temptation to do that which it is the policy of Rent Law to prevent, namely, to sell his tenure, and squander away the proceeds.

5th. Then, again, there seems no good reason for exempting occupancy tenures from being taken into execution for the debts of their owners.

It is difficult to see why the holder of an occupancy tenure should be in a better position in this respect than any other class of the community. If his tenure were not saleable at all, either under a decree for rent, or by private contract, or in any other way, one can understand the principle upon which it should be protected, when it is taken in execution for an ordinary debt. But if it is to all intents and purposes the property of its owner, transferable and devisable at pleasure, there seems no reason why it should not be taken in execution like any other species of property.

There is nothing in the position of an occupancy ryot, which should entitle him to such a privilege; he need not, as we have already seen, be himself a cultivator; he may be a

zemindar, or a mahajun, or more probably a land-jobber; and it would surely give rise to just complaint that any one class of persons or property should be thus protected.

After all, the occupancy ryot would probably gain little by the exemption; because if his property could not be taken, his person most assuredly would; and no Civil Court could in justice allow him to take the benefit of the Insolvent Act, without bringing his occupancy right to sale for the benefit of his creditors.

6th. The last objection to the bill which I think it necessary to make I shall deal with, for my present purpose, very shortly. It is not so much a matter of principle as of the partial and one-sided spirit in which, as it seems to me, the provisions of the Act are generally conceived; and I cannot help thinking that when it is drawn to the attention of the Legislature, some amendment will at once be made in that respect.

I propose to take one instance only as exemplifying what I mean. The provisions as to rights of occupancy contained in the Bill are to take effect *against landlords*, notwithstanding any contract to the contrary which may exist at the time when the Act passes. In other words, those provisions *are to be retrospective*, and are to override, so far as landlords are concerned, all existing contracts.

But on the other hand, the enhancement clauses which are intended to benefit the landlords, are not to be retrospected; they are not to take effect as against any contracts which have been made in favour of tenants. If a ryot has a lease for twenty years at a fixed rent at the time when the Act passes, his landlord would have no right to enhance his rent during that period.

Now the slightest consideration would show how unequally this would work. The landlord would probably have granted the twenty years' lease at a fixed rent, upon the express condition that at the end of that time the tenant's interests should cease, and he, the landlord, should have the right of making a fresh bargain; and the tenant would have made that bargain, in consideration of his rent not being enhanced during the term.

But if the new law is made retrospective as against the landlord, and not as against the tenant, you would be giving the latter the benefit of his part of the contract, while you deprive the former of the benefit of his part. If the Act is made retrospective, it is obvious that it should be so as against both parties; but the truth is that it would be extremely unfair to make it retrospective at all. If the law is to be altered, it should be altered *in the future* and *for the future*; so that both parties may have an opportunity of making their arrangements with reference to the altered state of circumstances.

I should hope that the obvious justice of what I am saying now would be apparent even to the most prejudiced advocates of ryoti rights; but I will not pursue the subject further for the present, because, in common with most other moderate men, I hope to see the new Bill carried out, without any of the violent reforms which appear to me so unwise and unjustifiable.

Having now pointed out those portions of the Bill which appear to me most objectionable, I desire to suggest some substantive provisions, which I believe would go far to cure the real evils complained of, and would prove of the greatest advantage to both landlords and tenants.

The landlords complain, very justly as I think, that under the present system they have no sufficient means of enforcing prompt payment of their rents. The ryots complain as justly that they are constantly harassed by vexatious and expensive litigation.

These evils are due no doubt in great measure to the improper conduct and vindictive feelings of both parties. But they are also due to the present state of the law, which the Government, as it seems to me, can very easily rectify.

The way in which the ryots harass the landlords is by combining to resist payment of their rents; and so long as they are in a position to raise questions of title in rent suits, they can generally succeed in keeping landlords out of their money for at least a twelvemonth; meanwhile, the landlords are unable to find the means of paying the revenue, and are obliged either to borrow at a ruinous rate of interest, or to let their estates be sold by the Collector.

On the other hand, the ryots are subjected to a frightful amount of litigation for the following (amongst other) causes. Instead of attempting to enhance their rents in the manner provided by the Rent Law, about which there is often considerable difficulty, landlords are in the habit of bringing suits against their tenants for larger rents than have been previously paid, and supporting those suits by forged receipts and fictitious jamabundis. If these suits are cleverly managed, they are not unfrequently successful; and I am sorry to say that this is by no means an uncommon mode of attempting to enforce enhancement.

But the most fruitful and pernicious source of litigation is the systematic way in which rival claimants for large properties are constantly endeavouring to contest their rights *inter se* by means of suits against the ryots.

A claimant to an estate has often a weak case or insufficient evidence to support it. He may have difficulties in his way, as regards title, or possession, or limitation. He may not have funds to enable him to sue the party in possession, or he may wish to gain time or strengthen his hands, before he commences his attack.

He therefore commences his plan of operation by trying to obtain rent from the ryots. He threatens some, he sues others, while he tries to induce the rest to espouse his cause by promising them a reduction of rent or other advantages; and each payment or acknowledgment of title which he thus succeeds in obtaining is laid up in store for the future to be used as an act of ownership.

As time runs on he grows bolder. He brings more and more suits, and he uses any decrees which he succeeds in obtaining, either as proof of his title or an inducement to other ryots to submit to his claim.

Meanwhile his unhappy victims are in real or pretended perplexity. They are, or affect to be, in doubt as to who is the real owner of the property; and they make the pretensions of the claimant a reason for not paying their rents to the party in possession. In fact, they often try to make the dispute in some way or other a source of profit to themselves.

In the result, however, it generally happens that the tenants are victimized by both parties, and not unfrequently have to pay rent to both. And whilst all this is going on the estate is often a sad scene of fraud, outrage and litigation, which lasts until the right of the real combatants is determined in the highest Court of Appeal.

The title is often tried and decided to no purpose in suits for rent against the ryots; and I have in my own experience known hundreds of suits arising out of these quarrels, in some of which the title has been decided one way, and in some another; but nothing of course has been definitely settled until the rival claimants have fought the matter out in some proceeding to which they both are parties.

And it often times happens that the very suit in which the right is ultimately determined is not brought by one claimant against the other, but by one of them against a ryot in which the other intervenes. This suit is probably instituted in the Munsiff's Court, and tried on appeal by the Subordinate Judge, instead of being brought, as it should be, by one claimant against the other in the District Court, and tried on appeal, if necessary, before the High Court.

By this means the real question is often determined in a Court unfit to try it; it is conducted by inferior pleaders, and the revenue is of course defrauded by the proper *ad valorem* fee not being paid upon the institution of the suit.

Now, all this is absolutely wrong; but so long as the law remains in its present state the Courts cannot prevent the mischief. The legislature ought to provide as far as possible that questions of title should never be tried in a rent-suit; and in the class of cases to which I have just been referring the evil may be easily prevented.

All that is required for the purpose is a slight extension of the provisions of Chapter VII of the proposed Bill. Let the registered owner of each estate or tenure be considered as against the ryots to be the lawful owner of that estate or tenure. *Let the ryots be bound to pay their rents to him, and to no one else.* They would thus never be in doubt as to who their real landlord is; they would have no excuse for not paying their rents, and they would never be in a position, in the class of cases to which I have referred, to raise any question of title.

On the other hand, no unregistered person claiming the estate or tenure could ever harass the ryots, or claim the estate through them. He must take what is obviously the straightforward and proper course of suing the registered owner; and if he succeeds in that suit he will be entitled to be registered at once and to recover from the ryots all rents which may become due from the time of his registration. Any rents which may have become due before that time will be made a question of mesne profit as between the parties to the suit, and the ryots will not be affected or disquieted by any such question.

If this were the law, it seems to me that rents ought to be recoverable in the same way and as readily as debt in a Small Cause Court. No question of any difficulty would be likely to arise, and the amounts sued for, as a rule, would be far below the Small Cause Court limit. With special Courts appointed for the hearing of such suits, a matter which has already been arranged between the Government of Bengal and the High Court, there is no reason, so far as I can see, why landlords should not recover their rents within two months, at the utmost, from the institution of each suit.

And, on the other hand, ryots would be rid of all those doubts and difficulties which are now productive of so much litigation, and which alone have hitherto furnished an excuse for the monstrous evil and anomaly that has so long existed, that rent-suits of from Rs. 5 to Rs. 50 in value should have been appealable to the highest Court in the province. The High Court itself would be relieved of a number of these small cases; and real questions of title, when they are appealed, would come up in such a shape as to be disposed of satisfactorily.

I believe that if the Government could carry out this simple plan, it would prove the greatest possible blessing to all classes of the agricultural community. It would not only simplify the enforcement of rents as between ryots and their immediate landlords, but as between all grades of the agricultural community, from the highest zemindar to the lowest sub-ryot. The great object of course would be to perfect the system of registration which has already been inaugurated by the Registration Acts, and made almost universal by the late Act for the Transfer of Property.

The advantages to be derived from perfecting this system will by no means be confined to the prompt and effectual enforcement of rents. It will be the means, as I have taken occasion to explain in a former minute, of sweeping away a loathsome mass of fraud and forgery, which has long been the curse of the people of Bengal and a disgrace to our Courts of Justice.

For the present my task is done. I trust that, with some of my fellow-countrymen at any rate, the humble but earnest effort that I have made to protect the landlords in Bengal from what appears to me nothing short of impending ruin, may find some support and sympathy. I trust that the landlords themselves may be awakened in time to their own danger; and I hope and pray that the policy of confiscation—which has borne, and is bearing still, such terrible fruit in Ireland—may be averted, by the blessing of God, from our Indian Possessions.

RICHARD GARTH.

LONDON;
6th September 1882.

Minute by the HON'BLE JUSTICE O'KINEALY.

IT is now three years since I became member of the Rent Commission. I accepted the appointment with reluctance, and I was retained in it against my will; and when the work was over, I sincerely hoped that I should never again be called upon to write on the subject. But, unfortunately, circumstances are often too much for us; and now, after this lapse of time, I find myself reluctantly compelled to answer a somewhat personal attack made upon me by Sir Richard Garth in a memorandum, not in India or in the heat of discussion, but in England calmly and deliberately, and published by him in the local newspapers.

Before entering into a discussion of the value to be attached to Sir Richard Garth's Note, it seems advisable to point out a few errors which somewhat disfigure it and diminish the weight I should otherwise attach to anything coming from a gentleman in his position.

At page 11 of his Note there is the following passage in regard to the deduction from the gross revenue of an estate in Bengal :—

"And then consider what has to be paid out of this 25 per cent? In the first place, the Government revenue; in the next, *irrigation* and embankment rates; in the next, collection charges; and the residue, small as it may be, will generally have to be divided between the zemindar, and, perhaps, three or four tenure-holders who intervene between him and the occupancy right."

Sir Richard Garth is of opinion that zemindars are bound to pay the water rates. These rates are imposed by a very modern enactment, passed within the last few years, namely, Act III (B.C.) of 1876, and are, under section 78, paid wholly by the ryots and directly to Government. The zemindar, so far from being, as Sir Richard Garth thinks, accountable for these taxes, has absolutely no responsibility in connection with them.

Another error occurs at page 17 of the Note. In treating of disputes between rival landholders, Sir Richard Garth, after stating that a claimant generally brings a suit against the tenant instead of the zemindar, goes on to say—

"As time runs on, he grows bolder. He brings more and more suits, and he uses any decrees which he succeeds in obtaining, either as *proof of his title*, or an inducement to other ryots to submit to his claim."

This statement, in so far as it asserts that such decrees could be used as proof of title against the owner in possession, is opposed to the ordinary rules of evidence. Indeed in the case of Gujju Lall *versus* Futteh Lall, a full bench of the High Court in Calcutta decided that decrees of this nature are not admissible in contests between third parties.

The real fact, as gentlemen acquainted with the practice of the mofussil courts are aware, that claimants bring such suits tentatively, in order to see the defence raised by the ryot for the person in possession, and yet not be bound in any future litigation against the latter by the result of the suit as a *res judicata*. So that instead of bringing the suits in order to be able afterwards to put in the decrees as evidence in a suit on title, as Sir Richard Garth thinks, they bring them because the decrees cannot be looked at or bind them in a suit on title brought against the person in possession as proprietor.

At page 14, Sir Richard, referring to the custom of transferring occupancy tenures, say—

"*4th.* My next objection is to the proposed transferability of occupancy tenures without the consent of the landhold. For this proposal, so far as I know, there is no authority whatever. Such tenures have never yet been transferable except by special custom, and such a custom is very rarely proved. I have known it repeatedly attempted in mofussil courts, but very seldom with success."

This statement appears to be somewhat erroneous. It is not quite—or, indeed, at all—accurate to state that occupancy tenures are not treated as transferable except in rare cases. Most people know that the jotes which cover the large districts of Rungpore and Rajshahye and Shahabad are treated as transferable; and indeed the custom of transferring such tenures is not confined to these districts. One of the first acts of the members of the Rent Commission was to call for returns from every Munsif in Bengal, showing how far rights of occupancy were treated as transferable and sold in execution of decrees within their jurisdiction. This return is printed at pages 383 to 391, Volume 2 of the Report of the Commissioners, and if Sir Richard Garth will refer to it, he will find that occupancy rights, so far from being rarely the subject of assignment, are freely transferable in every district of Bengal except Sarun and Ghumparun.

In regard to disputes between landlords and tenants, there is the following statement :—

"The way in which the ryots harass the landlords is by combining to resist payment of their rents; and so long as they are in a position to raise questions of title in rent-suits, they can generally succeed in keeping landlords out of their money for at least a twelve-month; meanwhile the landlords are unable to find the means of paying the revenue, and are obliged either to borrow at a ruinous rate of interest, or to let their estates be sold by the Collector."

Sir Richard Garth seems to think that no ryot should be allowed to raise as a defence that the person suing has no title to the rent. This proposal would involve a repeal of an important portion of the Evidence Act, and I will not now discuss it. It is to the statement that the ryots frequently combine and compel the zemindars to raise money at ruinous interest or let their estates be sold that I would draw attention. I must say Sir Richard Garth's statement is not borne out by my experience on the point. Though I have for twelve years been a Revenue Officer in Eastern, Western, and Southern Bengal, yet I have never known of such a sale as he describes, and having enquired from several Collectors and Revenue Commissioners I find they have never known of such a case.

Again at page 9 Sir Richard Garth, in dealing with the procedure and pleading of the mofussil courts, explains as follows why the Judges of the High Court ignored customary occupancy :—

"And here it may be convenient to notice a point that I find has been referred to by Mr. Reynolds and other gentlemen, more particularly by Mr. Edgar in his intersting paper upon customs in Behar.

"A passage has been quoted from a judgment of Sir Barnes Peacock, to the effect that the occupancy right conferred upon ryots by the Act of 1859 does not interfere, and was not intended to interfere, with any similar rights which might be established by custom. And I believe there is no doubt that such was the law. In accordance with this view, we are told by Mr. Edgar and other gentlemen that ryots in many parts of the country consider that they are holding by a customary tenure and repudiate altogether having acquired any rights under the Act of 1859. And yet it is said that High Court Judges have constantly affirmed that, practically, at the present day, there is no other occupancy right set up or recognised in the civil courts than that which was conferred by the Act of 1859.

"I believe these propositions are both perfectly true, and certainly they are easily reconciled. Since I have been in Calcutta, I have had many hundred cases before me from all parts of the country in which occupancy rights have been set up, and I do not remember one of them in which such a right was sought to be established by custom. And the reason to a lawyer is plain enough. These poor people—the ryots—know no difference between *custom* and *prescription*; in fact, they probably have no word in their language which signifies "prescription." If they were claiming a right of way or a right of drainage, they would claim it in common parlance as "a customary right," although, in point of law, the right might not be claimable by custom. A right to these easements, like a right to lands, is, in the absence of express grant, almost always claimed by prescription, although in this country the provisions of the Limitation Act generally render it necessary to set up a prescriptive title.

Now, I think it is to be regretted that Sir Richard Garth, before he committed himself to such a statement, should not have consulted some one acquainted with the language of the people, and thus make sure that they are unable to plead prescription. I have for several years superintended the drafting of Government pleadings, and have seen hundreds of such documents. I have several times seen prescription properly pleaded, and have never heard of any such difficulty as is now suggested by Sir Richard. Nor do I take the same view of the quotation from Mr. Reynolds. What that officer said is to my mind something quite different. His words are as follows :—

"I suppose there is no doubt that Act X of 1859 conferred new rights on pykast ryots. The question is whether it did not take more from the khodkasts than it gave to their pykast brethren. It may not have been intended to have any such effect. The framers of the law may not have contemplated any interference with the venerable common law rights of the khodkast ryot. But in practice there is no doubt that the customary right has been obliterated by the Statutory definition. I have myself heard more than one Judge of the present High Court express an opinion in conversation that the only right of occupancy existing at the present day is the twelve years' right conferred by the 6th section of the Act of 1859."

But I do not attach much importance to these mistakes. They in nowise effect the main question, which relates to the earlier rent laws in force in Bengal; nor do they directly tend to shew that Sir Richard Garth's knowledge of the rent question is not both accurate and definite.

Those who are acquainted with the rent question—and, indeed, many who do not pretend to any special knowledge of the subject—know that there are certain enactments which stand out clearly like landmarks in the course of legislation. There were, first, the Decennial and Permanent Settlement; then Regulation VII of 1799 and Regulation V of 1812; lastly, Act X of 1859. The regulations just quoted were known by the people as *Huftum* and *Punchum*, and they are still as familiar as household words among the agricultural population. They were repealed by Act X of 1859, during the Viceroyalty of Lord Canning, whose published reasons in support of that measure are too well known to call for reference. Let us see the knowledge Sir Richard Garth possesses in regard to this, the most modern and, I may say, the best known portion of the history of the rent question. He says—

"But whilst I yield to no man in the earnest wish to see all necessary and wholesome reforms carried out, I confess I view with horror and dismay the revolutionary provisions of the present Bill. It appears to me absolutely cruel to sacrifice wantonly and unnecessarily the rights of one section of the community for the supposed benefit of another; to violate laws and usuages which have been sanctioned by the courts and the Legislature for nearly a century; *to unrip a solemn settlement of vexed questions which was made by the Bengal Legislature no later than twenty-three years ago*; and all this, not for the purpose of meeting any actual complaints or rectifying any proved abuses, but merely to place the ryots in a position which certain well-meaning, but, as I think, mistaken, members of the Rent Commission imagine that they occupied in the year 1793."

And again, paragraph 6—

"By the Acts of 1859 and 1869, the relations of landlord and tenant had been settled by the Bengal Government, and upon the faith of that settlement many thousands of estates had been purchased by the zemindars and many lakhs of rupees expended upon those estates."

And in another place he says to the same effect—

"But even to those who disagree with me upon this question of authority, who know nothing and care less about legal maxims, and who think that the present generation should be guided entirely by their own bright lights, without regard to the wisdom of the past, even to these I would say,—Is no respect or weight to be attached to the solemn Acts of the British Government? Are measures of State, which have been passed by one *Lieutenant-Governor of this Province, and confirmed by another, to be lightly set aside by a third because he thinks that a law which was passed ninety years ago has been misunderstood by the courts of law and the Government?* If so, I should like to ask,—What security have the public that ten years hence another Lieutenant-Governor may not arise, who will take another view of the question and cause another grand revolution.

"But when we consider that *upon the strength of those views* it is now seriously proposed to deprive the land-owners of this province of *rights and privileges which they have enjoyed for nearly a century*; to relegate them to a position far inferior to that which they occupied before the Permanent Settlement; to

unsettle, and re-establish upon an entirely new footing, the relations between landlord and tenant; and to upset a settlement of those relations *which was arrived at in 1859, and confirmed ten years later by another Act of the same Government*, I think that the Bengal public has, at least, a right to enquire upon what authority those views are founded, and how far they are consistent with the opinions of the many distinguished men, who as judges, statesmen, and legislators, have administered and explained the law during the past ninety years."

It would be difficult, I imagine, for any person professing a knowledge of the subject to display less acquaintance with Act X of 1859 and the ordinary law of this country than is exhibited in the above extracts. Sir Richard Garth is evidently unacquainted with the circumstances attending its enactment. He does not know that this Act was passed by the Supreme Government and not by the Local Government. He is apparently unaware that the Local Government did not possess any power to legislate for some years afterwards. He is unacquainted with the fact that the Bill was modified by the policy in force in the districts of the North-West which were not under the Permanent Settlement, and he is equally unacquainted with the famous Minute of Lord Canning. Surely, it is to be deplored that before Sir Richard Garth forced Mr. Mackenzie and myself into a discussion on the nature of the relation of landlord and tenant in Bengal, he did not make certain that he was acquainted with the more, if not the most, important portion of the later history of that Province.

The next point on which Sir Richard Garth dissents from Mr. Mackenzie and myself is in regard to the views held by us with respect to the Law of Landlord and Tenant before Act X of 1859 was passed. We held that under the general law no tenant could be ejected except for non-payment of rent, nor could his rent be enhanced beyond the customary rate. In dealing with this portion of the question, we were most careful to give in detail the authority on which we relied in support of each assertion we made. We did nothing rashly; we hazarded no statement on the chance that it might be true, or that our adversaries would not find it out if we were wrong; and if our notes are searched, I venture to say that there will not be found a single position for which authority has not only been given, but in nearly every case the exact words are printed either in the text or on the margin. Thus, on the question of ejectment otherwise than for non-payment of rent, I pointed out (see page 442, Volume II of the Report) that the opinion we advocated was that of Lord Cornwallis, when he said:—

"Whoever cultivates the land, the zemindar can receive no more than the established rent, which in most places is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit."

I stated that the Court of Directors had adopted this expression of Lord Cornwallis, and when sanctioning the Permanent Settlement said:—

"Our interposition where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be *a general maxim that the immediate cultivator of the soil duly paying his rent should not be dispossessed of the land he occupied.* This necessarily supposes that there were some measures and limit by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar, for otherwise such a rule should be nugatory, and in point of fact the original amount seems to have been annually ascertained and fixed by the Act of the Sovereign."

I also referred, and indeed printed, another proclamation of the same period in which they declared it was repugnant to the custom of the country to enhance rents on a rise of prices.

I pointed out that Earl Moira, the Governor-General, had on several occasions supported the propositions for which we contended, and notably in 1822 had declared his opinion in the following words:—

"115. Though leaving the task of assessing their estates chiefly to the zemindars who were required to issue pottahs subject to the direction of the Collectors as to the form, and of the courts of justice as to the terms, *the intention of the Government appears clearly to have been that the legal rates existing at the time of the Settlement should be maintained.*

"116. The rules which prohibit the imposition of new abwabs or cesses, which prescribe the consolidation of all existing demands, which direct the issue of pottahs with the amount of rate of rent specifically adjusted, and which provide for the renewal of pottahs at determinate rates when cancelled under the rules enacted against collusive or improvident agreements, all appear conclusively to evince the design of the legislature to protect the ryots against any arbitrary enhancement of rents. The views of Lord Cornwallis are, indeed, specifically pronounced in his Minute of the 3rd February 1790, wherein he distinctly declares that rents were only to be raised by reclaiming waste or inducing the ryots to cultivate more valuable articles of produce: and the preambles of Regulations XIX and XLIV, 1793, by declaring the original right of Government to a certain portion of the produce of every beegah of land, and designating the profits of the malguzars as the difference between the value of such proportion of the produce and the sum payable to the public, *appear to be founded on the principle that the ryot's payments were to be regarded, not as the mere rent of land due to an absolute proprietor, but as an assessment payable to intermediate managers possessing a hereditary and transferable property in the incidence of their management.*"

I also printed the deliberate opinion of the Court of Directors, who again in 1819 said:—

"We have already enjoined you to reserve the waste lands in making any future settlement, but we have not been able to satisfy ourselves as to the nature of the interest possessed by the zemindars in the waste lands of these districts which have been permanently settled. Your construction seems to be that his power over them is absolute and unconditional, and that he is at liberty to contract for the occupation of them at whatever rates he can obtain. *It is, however, the opinion of many considerable authorities that in leases of waste as well as of other lands, the pergunnah rates* form a standard of payment not to be exceeded."

Further, I asserted that such was the law of the land; and in support of this assertion I quoted the construction of the Sudder Dewany Adawlut, issued for the guidance of all Courts, which decided that a ryot could only be ejected for non-payment of rent. I contended, and I

still contend, that this was the law and practice of our Mofussil Courts from 1815 to 1859, or for nearly forty-four years before the passing of Act X of 1859. Nor did I confine my authorities to the construction of the Sudder Dewany Adawlut. I printed in full a decision of three Judges of that Court in 1855 to the same effect, and I added that this decision was quoted as an authority by their Lordships of the Privy Council in 1869 in the case of *Shibbessun Debia*, reported at 13 Moore, page 270 : and I may now add that the claim of a ryot, without qualification, to a right of occupancy is indirectly admitted by the Judicial Committee at 11 Moore, page 449. Again, I printed a case in which the Chief Justice and two Judges of the late Supreme Court, viz. Grant, Seton and Peel, decided that an ordinary ryot's tenure was not a tenancy-at-will, in fact, that there was no such thing as a tenant-at-will known to the law in force in Bengal. I also pointed out that even Sir Barnes Peacock had admitted that—

"the intention of the legislature (to use the words of Lord Cornwallis) was to prevent the zemindar from dispossessing one cultivator for the sole purpose of giving the land to another."

I shall not now re-enter on those authorities. All I wish to point out is that the opinions of the Governor-General and Directors to which I have referred, and the judgments of the Supreme Court, Sudder Dewany, and Privy Council, were mentioned in detail, so that every reader could judge for himself how far our opinions were wright or wrong.

Further, to challenge criticism, I put the position of cultivators before and after Regulation V of 1812 in the following tabular form :—

Before Regulation V of 1812.	*After Regulation V of* 1812.
1 The form as well as the rates were subject to revision by Government officers.	1. The form (*i.e.*, the term) was not subject to the Collector's revision.
2. The zemindar was bound to grant leases at the pergunnah rates, and any ryot could, in a regular suit against the zemindars or farmers who refused pottahs or receipts, get them, and damages from the party refusing under the provisions of sections 59 to 63, Regulation VIII of 1793. Const. 67.	2. The zemindar was bound as before to grant leases at the pergunnah rates and to renew them; but he could also take salamee and give a perpetual lease at low rate.
3. The zemindar could claim rent at the pergunnah rate by a general notification under section 5, Regulation IV of 1794.	3. The zemindar could proceed as before, except where the pergunnah rate would be an enhanced rate, when he must follow the procedure laid down in not only section 5, Regulation IV of 1794, but also sections 9 and 10 of Regulation V of 1812—Const. 257, S.D., December 1850, page 8; Select Rep., VII, page 182.
4. If the zemindar, instead of suing for rents, elected to distrain, the ryot could contest the proceeding by a regular suit. Const. 327.	4. The ryot could bring a summary suit (Const. 113), and the zemindar would be compelled to prove that the amount demanded was conformable to the existing pergunnah rates and the actual extent of land—Const. 234, Const 714, S.D., December 1852, page 120; S.D., December 1851, page 620; Select Rep., II., 174

If, then, Sir Richard Garth were desirous of combating our position, I presume the first thing he should in fairness to us do would be to look up the authorities and see how far they supported the conclusions for which we contended. It is not by mere general statements in regard to us or our motives that our arguments can be set aside; and I conceive that, however strongly Sir Richard Garth may feel on the subject, he is not justified in avoiding all reference to the authorities we put forward, and in confining his exertions to censuring us in no measured terms when we happen to differ from him. This manner of dealing with a question may succeed for the moment with those readers who possess a very limited knowledge of the subject, but it has never, so far as I am aware, been followed by lasting success. Now, instead of meeting the long list of authorities given by us, let us see how Sir Richard Garth deals with the question. He continues as follows :—

"And in answer to this enquiry, the public may be surprised to learn that, as to some of the proposed changes, they are based upon no authority at all; as to others, that the views of these gentlemen are founded upon their own construction of the Regulations of 1793 and the Act of 1859,—*entirely without regard to the construction which has been put upon those enactments by the Courts of Law and the Legislature; and as to all, that their views are not only inconsistent with the opinions and the policy of the last three generations, but with the laws and usages which have prevailed in Bengal since the time of the Permanent Settlement.*

"And, as I understand Mr. Mackenzie's Note of the 31st May 1880, he very candidly avows this to be the case. We find in paragraph 7 of that Note the following passage :—

"'Leaving, then, Mr. Harrison's Note of the 6th March 1880 to be read with Mr. O'Kinealy's elaborate examination of the true relation of landlord and tenant in Bengal, *before our legislation and our case law, assisted by the culpable neglect of our Government, upset it*, I pass on to notice very briefly Mr. Harrison's earlier Note,' &c.

"Now, Mr. O'Kinealy's elaborate examination of the relation of landlord and tenant which is here referred to, is to be found in that gentleman's note of the 16th June 1880, in which, after reviewing *what he considers to have been the law before the year* 1793, *he proceeds to place his own construction upon the language and meaning of the Permanent Settlement*, and to explain his views of the law as amended by it. Mr. Harrison's Note of the 6th of March is one in which that gentleman had ventured to disagree with Mr. Mackenzie; and the legislation and the case law which are thus trampled under foot by Mr. Mackenzie, and the Government which he says has so culpably neglected its duty, *are no other than the legislators, judges, and statesmen who from time to time have expounded and enunciated the law since the days of the Permanent Settlement, and who are unfortunate enough to have differed in opinion with Mr. Mackenzie.*

"And when Mr. Mackenzie finds fault with these *eminent men* for having "*upset*" (as he calls it) the relations of landlord and tenant in Bengal, it may, perhaps, be a question with some of us, who entertain any respect *at all for the wisdom and experience of our forefathers*, whether what they upset was really the relation of landlord and tenant, or only Mr. Mackenzie's views upon that subject.

"*The question when one looks at it seriously becomes really one of authority. Which is right, the distinguished and learned men on the one hand, who have, according to Mr. Mackenzie's ideas, upset the proper relations between landlord and tenant, or Mr. Mackenzie and Mr. O'Kinealy on the other?*

"I have always been under the impression that the proper construction of a legislative enactment is in this, as in most other countries, a matter *primâ facie* to be determined by the courts of law; and if the courts of law give a meaning to it which the Legislature or the Government did not intend, it is then the duty of the Government, with the assistance of the Legislature, to set them right by passing some amending measure.

"*But when we find that the construction which courts of law put upon the Permanent Settlement was approved by the Legislature and the Government*, it certainly looks very much as if that construction were the one which the Government had originally intended. And, moreover, when the Legislature, in the *year* 1859, *accepted their interpretation of the law, and framed the Act of that year in accordance with it, it seems to me that the weight of authority in favour of that interpretation is almost overwhelming*; and the more so, when we remember that, in the year 1869, after the Government, on the one hand, and the agricultural community, on the other, had made trial for ten years of the working of the Act of 1859, another Act was passed, which, instead of altering that law, confirmed it in all material respects.

"No doubt *as against this weight of authority*, we have the opinions, expressed with considerable confidence, of Mr. Mackenzie and Mr. O'Kinealy. The public are not at present informed of Sir Ashley Eden's views, although we are led to believe that he is generally in favour of the ryots; and Mr. Reynolds' opinions, if they are to be gathered from his memorandum on the Rent Bill, are also in the same direction. But I have not found any authority in favour of the extreme, and in my humble opinion erroneous views which are expressed in Mr. O'Kinealy's note, and with which, as I understand, Mr. Mackenzie substantially agrees."

In short, Sir Richard Garth asserts that the views held by Mr. Mackenzie and myself are inconsistent with the laws and usages which have prevailed in Bengal since the time of the Permanent Settlement, with the opinions of judges and legislators and statesmen who have resided in India during the same period, and that we can only claim as the authority for our position our own naked and uncorroborated assertions.

There is not, I am bound to say—and I feel certain every one who has read my Notes will agree with me—a single statement in these paragraphs bearing on the relation of landlord and tenant before Act X of 1859 which is correct. I did not put forward my own opinion merely as authority. I pointed out in detail the authorities on the subject, and even printed them; and I asserted—indeed, still assert—that Lord Cornwallis and other Governors-General, the Court of Directors, the courts of this country, and their Lordships of the Privy Council, had decided in support of the view for which Mr. Mackenzie and I contended. The authorities are still to be found in my Note, and have never been contradicted or proved to be inaccurate. It has been to me a matter of deep regret that Sir Richard Garth, who has "read all the papers printed by Government," and in some cases referred to extracts from my Note, has not been able to find those authorities; but I really do not know in what manner I could have brought them more pointedly to his notice. Even if the judgments of the Sudder Dewany, the Supreme Court, and the Privy Council had not been referred to in express terms, still, I submit,—considering the position Sir Richard assumes, and the intimate acquaintance with the laws of this country which he claims—it would not be unreasonable to expect that he should at least, have taken some pains to acquaint himself with the more remarkable reported cases decided by the Sudder Dewany, the Supreme Court, and the Judicial Committee of the Privy Council on this subject. He does not tell us who the judges and statesmen were who, before Act X of 1859 was passed, held opinions different from those advanced by us. He does not even refer to a single judgment as an authority in his favour, nor does he mention the name of a single statesman. I had already denied their existence in express words, and I see nothing in Sir Richard Garth's note which leads me to think I was wrong. I may fairly demand what every person who is compelled to enter into a controversy should expect, namely, that authority be not set aside or ignored, nor assertion take the place of conclusion, no matter how eminent the position of the writer; that questions connected with the Permanent Settlement be not decided by general appeals to the "wisdom and experience of our forefathers," or by references to "judges, statesmen, and legislators," without some indication of the individuals to whom such statements are ascribed. But even this amount of consideration has not, I regret to say, been shewn us by Sir Richard Garth. Ignoring all the authorities we quoted and even printed in full, yet never referring to an authority himself, he charges me with not taking into consideration the mode in which the Regulations were viewed by those who lived at, and after the time of, the Permanent Settlement. He says:—

"So much, then, for the question of authority. I am aware that some of my readers may think that what I have said on that subject is so much waste paper. Those who think that, in construing a legislative enactment which was passed some ninety years ago, they are at liberty to read it in their own way, and according to their own lights, without considering what construction has been put upon it by judges and statesmen during the intervening period, will naturally attach little weight to the arguments I have used. Those who think that the construction thus put upon the Permanent Settlement was in truth a subversion and up-setting of the relations between landlord and tenant which that Settlement intended to establish, will probably regard my argument in the same light.

"But I trust there are others who will take a different view, who, like myself, have a due respect for the wisdom and experience of the past, and who would deem it nothing short of presumption to denounce a construction which has been put upon the law for the last eighty years as rank heresy. I trust, indeed, that even my friend Mr O'Kinealy, when he becomes, as I hope he will before long, a permanent member of the High Court, will have learnt by that time to have some little respect for authority and precedent, and will not then forget, what he seems to have forgotten when he wrote his Note, that most admirable maxim in the construction of an ancient statute, *Contemporanea expositio est optima et fortissima in lege*" 2 Coke's Inst. 11.)

It is due both to Sir Richard Garth and myself that I should refrain from answering the personal attack involved in this paragraph, as well as others of a similar nature in different

portions of his memorandum. That I gave my authorities in detail, which may still be read by any person who turns to my note, is undoubted: that Sir Richard Garth has not referred to them, not once quoted the laws in force before Act X of 1859, not mentioned a single exposition of the Permanent Settlement Regulations, nor the opinions of any statesman on it, is equally undoubted. Under these circumstances, I must leave to others to decide whether it is I or Sir Richard Garth who has ignored the maxim which he has considered so destructive of my conclusions.

I will now refer to such passages of Sir Richard Garth's notes as give an indication of the knowledge he possesses of the Permanent Settlement. He says—

"But when we consider that *upon the strength of those views* it is *now seriously proposed to deprive the land-owners of this Province of rights and privileges which they have enjoyed for nearly a century; to relegate them to a position far inferior to that which they occupied before the Permanent Settlement*; to unsettle, and re-establish upon an entirely new footing, the relations between landlord and tenant; and to upset a settlement of those relations which was arrived at in 1859, and confirmed ten years later by another Act of the same Government, I think that the Bengal public has, at least, a right to enquire upon what authority those views are founded, and how far they are consistent with the opinions of the many distinguished men, who, as judges, statesmen, and legislators, have administered and explained the law during the past ninety years."

In regard to a portion of this statement, I have already pointed out that the right to evict or enhance was not given by the Permanent Settlement, and Sir Richard Garth has no authority to the contrary. But it is to his idea of the position of zemindars before the Permanent Settlement that I would call attention. It is, I think, unfortunate that he should have made such a mistake. Before the Permanent Settlement, zemindars were looked upon as mere tax-collectors; and though in some cases their offices are said to have been hereditary, they were never allowed to possess any interest in the soil, and were subject to fine, imprisonment, and even corporal punishment, by the ruling power, and they only received the usual amount of malikana—10 per cent. This is clear from the papers printed by Government in connection with the Permanent Settlement and the Preamble to Regulation II of 1793. Nor were their relations towards the ryots more favourable to them. They were not empowered to evict. On the contrary, they entered into an engagement to "conciliate and encourage the ryots;" and if Sir Richard will refer to the extracts from the 5th report, printed in my note, and to Volume 3, page 426, of Harington's Analysis of the Regulations—a book treated by their Lordships of the Privy Council with the greatest respect—he will find that in 1793 cultivators in Behar and Bengal possessed a right of occupancy. This was then the normal condition of things which, indeed, even now exists in other parts of India. Can any one who possesses the slightest knowledge of that Settlement say that the present legislation attempts to replace zemindars in the position, or will deprive them of the rights and privileges, which they enjoyed before that period? Yet this is a proposition put forward by Sir Richard Garth as if it rested on the firmest foundation.

Again, he says in reference to the same Settlement:—

"It seems, indeed, extremely probable, having regard to Lord Cornwallis and Mr. Shore's Minutes, that the period of prescription differed at that time in different parts of the country, and that a length of residence which was sufficient in one district or estate to entitle a ryot to a permanent interest, was not sufficient in another. It seems also probable that, after the Permanent Settlement, the zemindars took advantage of the liberty of contract which they acquired under that Settlement to break in upon existing customs by requiring those who took their lands to enter into written engagements upon special terms as *to rent and duration of tenancy*. They would naturally have wished then, as they do now, to keep the control of their property as far as possible in their own hands."

Sir Richard Garth is of opinion that the zemindars were under the Permanent Settlement allowed liberty to contract. And yet, so far from liberty of contract being allowed, it was prohibited by section 65 of the very Regulation to which he refers. Moreover, as every one conversant with the early Regulations knows, zemindars, so far from being allowed to keep, as Sir Richard Garth puts it, "the control of their property in their own hands," were prohibited by Regulation XLIV of 1793, Regulation I of 1795, and Regulation XLVII of 1803, from granting leases for a period exceeding ten years, and no pottah was valid unless it had been submitted to the executive revenue authorities and approved of by them in the manner laid down in section 58, Regulation VIII of 1793. I am sorry Sir Richard Garth has omitted to notice these Regulations. I feel sure that had he been aware of their existence, he would not contend for a moment that a zemindar who could only demand the customary rate of rent, and who was declared incapable of letting out lands except in the manner allowed by the revenue authorities, or for more than ten years, was in the same position as an English proprietor.

Further on Sir Richard says:—

"We are told in Mr. Reynolds' memorandum on the Rent Bill, page 7, that the Government of Bengal had 'already accepted the principal that the occupancy right ought to be given to the great mass of settled cultivators.' But then comes the question, the importance of which it is impossible to overrate,—What is the true mean of a '*settled ryot*?'

"I suppose that no man with any decent share of modesty would undertake to define at the present day what was the exact status or qualification of a settled or khodkast ryot in the year 1793. Even Mr Mackenzie, who is by no means shy of expressing his opinions, says in his Note of the 6th January 1880 I have already admitted that it is, perhaps, at the present day, impossible and useless to attempt to rehabilitate the khodkast or resident ryot *totidem verbis*.'

"But although it may now be impossible to define the qualifications of a settled ryot, I should have thought that the boldest advocates of a ryoti right could hardly have accepted the definition of a settled ryot in Mr. Reynolds' Bill as fairly representing the idea of a settled ryot in 1793. It seems almost impossible to imagine that a man who took up his residence in a village on one day, and acquired land in it the next, became at once a *settled* and *resident ryot* of that village in the proper acceptation of the term.

"The word *'settled,' ex vi termini*, seems to point *to some permanent and established status of settlement or residence*; and when we consider the expression as explained by Mr. Shore's Minute, by the 'Directions of the Government to Settlement Officers,' by the extracts from Harington's analysis, and by the other authorities which are quoted in Mr. Field's note of the 13th May 1880, I should have thought that no reasonable man, and certainly no lawyer, could entertain any doubt that the permanent title which a man gained in those days to village lands by becoming a settled ryot *depended in some degree upon prescription*."

It would thus appear that Sir Richard Garth is of opinion that the words "khudkast" and "settled ryot" are convertible terms, one being a translation of the other; that both are found in the Permanent Settlement Regulations, and he supports his interpretation of "khudkast" by arguing on the ordinary meaning of the word "settled." There is no foundation for such a proposition. Nor, if there were, am I prepared to admit that the word "settled" denotes a person who has held for a long period. This is an English law term introduced by Englishmen into this country If Sir Richard refers to the 13th and 14th of Charles II, Chap. 12, which was the law of settlement in force in the time of Lord Cornwallis, he will find that only forty days' residence on lands was necessary for any man to be considered as settled in England.

Sir Richard continues as follows:—

"In the year 1793, twenty years was the usual period of prescription, and until very lately twenty years was the period in England. But in this country an adverse period of enjoyment for twelve years only has been sufficient for some years past to establish a title; and it was probably with a view to that law, as well as for other reasons, that the twelve years' rule was fixed by the Act of 1859. I believe it will be found that in no country in the world can a prescriptive title be gained in any shorter period."

Sir Richard Garth is of opinion that the period of prescription in 1793 was twenty years. This is incorrect. There were two periods of prescription fixed in sections 49 and 60 of the Permanent Settlement Regulation, namely, twelve and three years, and hence arose the doctrine which prevailed in Bengal, that khudkast ryots in possession for twelve years before the Permanent Settlement, *i.e.* khudkast kadimi ryots, were in a better position than ordinary khudkast tenants, and were not liable to enhancement, or even to eviction by auction purchasers, except for non-payment of rent.

In another portion of his note, Sir Richard Garth, in dealing with the question of land let for building purposes, refers to the Permanent Settlement as follows:—

"*3rd.*—I now come to the third change in the law, which I consider objectionable, namely, the chapter which relates to the letting of land for building purposes.

"What possible reason is there for the Government to interfere in this matter? It has nothing to do with the Permanent Settlement, or with what is generally known as the *Rent Law*, or with cultivating ryots or their rights. If there is one thing more than another in which a landlord should be allowed to exercise his own discretion, it is in letting his land for building purposes."

Sir Richard Garth is of opinion that land let for building purposes is not covered by the Permanent Settlement, and apparently it is supposed that such land was governed by some other laws not connected with that Settlement. This is an entire mistake. All the lands in Bengal, building or agricultural, were governed by the same Settlement. It is only in recent days that this principle has been lost sight of, when it was held that Act X of 1859, which replaced the old Regulations, only referred to agricultural holdings and so deprived the holders of ordinary village building lands of all Statute law.

There still remains one more reference made by Sir Richard Garth to the Permanent Settlement. Sir Richard says:—

"It will be remembered that, before the Permanent Settlement, the jama payable by the ryot to the Government was a certain proportion of the gross produce of the land. This proportion appears to have varied at different periods and in different districts; but in the extract from the 5th Report, which is quoted in paragraph 31 of Mr. O'Kinealy's Note, I find the rule of proportion is laid down as follows:—

"'By this rule, the produce of the land, whether taken in kind or stated in money, was understood to be shared in distinct proportions between the cultivator and the Government. The shares varied when the land was recently cleared, and required extraordinary labour; but when it was fully settled and productive *the cultivator had about two-fifths and the Government the remainder.* The Government share was again divided with the zemindar and the village officers in such a proportion that the zemindar retained no more than about one-tenth of this share,' &c.

"Taking this, then, to have been the general rule at that early period, I presume there is no doubt that by virtue of the Permanent Settlement the zemindar by his bargain with the Government became entitled to the Government share of the produce. He took all risks of this share being duly realized; he was bound in any event to pay the Government revenue; he had to pay all collection charges and other sums which theretofore had been paid by the Government; and he was entitled to the residue of the rent, when he had secured it for his own profit.

"Now the Rent Commission, as I understand, are desirous of restoring this state of things, and, if so, one does not quite see why the zemindar's share of the produce, which in former days amounted to three-fifths, should now be reduced to one-fourth; and it is difficult to understand why a landlord who receives his rent in kind, should receive double as much as the landlord who receives it in money. That difference assumes that, in the average of years, one-fourth of the value of produce in the case of money-rent is equivalent to half of the produce in the case of rent payable in kind."

It is difficult for me to understand how any reference in my note could have led Sir Richard Garth to come to the conclusion that rents in Bengal depended on the value of the gross produce of the holdings. This very point was raised by one of the Commissioners and elaborately discussed. The authorities take up four pages of my note—pages 469 to 473. there pointed out that in 1822 the Government of India declared that—

"in Bengal, from the most ancient times of which we would have any clear accounts, the system of money rates would appear to have prevailed, and in none of the Provinces would the system of division seem to have been universal."

And added—

"The endeavour to go back to the times when any general or systematic rule of division existed would lead us far beyond the limits with reference to which the right of the people will have to be settled."

In conclusion, I said:—

"My answer is that there is absolutely nothing new in Mr ———'s argument. It was started by the Board of Revenue in 1822 in regard to the Upper Provinces, in which payment in kind was in some parts more common than payment in money. What is novel, and the credit attached to it belongs to Mr. ———, is the extension of the theory, on principles called equitable, to Bengal, where money rent had been in force from the earliest times; and whether this extension is dangerous to my interpretation of the Permanent Settlement, or to Mr. ———'s knowledge of the Regulations and the history of Bengal, I am satisfied to leave to the members of the Commission."

This was written more than two years ago. It has never yet been answered, nor has its accuracy been questioned. Unless Sir Richard Garth can produce some authority on his side I must hold that it disposes of his contention.

But even if I admit, for the sake of argument, that the quotation applied to Bengal, I think, if Sir Richard Garth continued the quotation from my note, the reason why zemindars should not get more than 25 per cent. of the raw produce would be evident. It runs as follows:—

"The remainder * * * was divided in such proportion that the zemindar retained no more than about one-tenth of this share, *or little more than three-fiftieth parts of the whole.*"

If they were entitled, then, to only three-fiftieths of the gross produce as their own share at the time of the Permanent Settlement, were prohibited by proclamation and the Regulations from enchancing for a rise in the price of produce, and could not increase the customary rates of rent, and if the ryots were entitled, as they were, to leases with a right to renewal in perpetuity as they were under the Regulations, then looking at the small proportion which the Government revenue bears to the gross rental of Bengal, one would think that giving them one-fourth of the produce now is rather a concession to the zemindars than an injury to them. Surely, Sir Richard must be aware that no zemindar, from the date of their petition in 1786 up to the present date, has ever received in any settlement more than 10 per cent. of the sudder jumma as malikana or zemindar's share, and that this is all they could claim under the existing law if Bengal were re-settled; and yet he tacitly assumes that the zemindars are entitled not only to the increased price of their own share, but are also in a position to realize the increased value of the Government share and keep it. They do not agree to give it to the ruling power.

Sir Richard Garth inclines to the idea that the one-fourth limit will injure the zemindars. I cannot say how they will regard this limit after the publication of his note calling on them to awake to their own danger, but some time ago it certainly was more than some of them ever dreamed of getting. In 1876 the landlords of Eastern Bengal, in a memorial, begged that they might obtain less by 5 per cent. than what Sir Richard Garth now looks upon as a proposal which, if accepted, will confiscate their rights. They said:—

"Under the circumstances mentioned in this memorial, your Memorialists pray, first, that the present laws of the country be altered with a view to facilitate due enhancement of rents and prompt realization thereof; second, that the natural market or competitive rate of rent—such rate as any ryot would be prepared to pay for the land,—subject to the condition that it be not higher than a certain maximum proportion of the gross produce—be declared to be the legal rent due from all ryots, without any deduction whatever in favour of ordinary occupancy ryots or of those of 20, 30, or 40 years' standing; third, that the low rents paid by non-occupancy ryots newly settled in backward localities be not taken to represent competitive rates; fourth, *that in cases where there is any doubt as to what the competitive rate is, 20 per cent, or one-fifth of the money value of the gross produce of the land (taking an average of three years), be declared as the rent to be decreed.*"

If Sir Richard Garth had been aware of this memorial, I feel certain the portion of his note under discussion would not have been written. Whether the limit of one-fourth is not too high is certainly worthy of consideration. Sir Richard Garth calculates that rent in England amounts to from one-sixth to two-sevenths of the gross produce, and if this be so, I really do not see how he can object to the one-fourth limit in this country. In England the farms are large, the landlord builds the farm-houses, makes all permanent improvements and often keeps them in repair. In India the holdings are in many places extremely small—three-fourths of the ryots in Eastern Bengal do not hold more than three or four acres; the landlord never builds a house or repairs it, and the tenant is in many cases not allowed to sink a well to irrigate his fields without paying him a fine. If the rent in the former country is from one sixth to two-sevenths, the rent in the latter should undoubtedly be less than one-fourth. I am not personally acquainted with the proportion of rent to the value of gross produce in England, but if the statement of Sir James Caird, the well-known authority on English Agriculture, is correct, the proportion given by Sir Richard Garth is open to question. It appears from his book, "The Landed Interest," that the price of an acre of average wheat is in all-corn and straw £12-7s., and the rent £1-10s., so that the proportion is one-eighth, and not one-sixth as Sir Richard Garth puts it. I firmly believe that when the maximum limit of one-fourth is reached all over the country, the agricultural population of Bengal will be rack-rented.

I have noticed every reference made by Sir Richard Garth to my note, and I regret to say that on every one I have the misfortune still to differ from him. It only remains to sum up the result of this discussion and to determine the value to be given to his memorandum.

This is a very invidious task, but the duty has unfortunately been forced upon me. I believe I have succeeded in shewing that—

it betrays an imperfect acquaintance with the more recent laws and decisions still in force; that—

it exhibits a defective knowledge of the history of Act X of 1859; and that—

every reference it contains relating to the Statute law in force before Act X of 1859, to the Permanent Settlement of Bengal, or to the position of zemindars before that Settlement, is inaccurate.

I entered upon this discussion with reluctance, and I have grudged the time occupied in writing this note, which I can ill afford to spare. I do not for one moment suppose that I shall convince Sir Richard Garth that the conclusions arrived by Mr. Mackenzie and myself are correct, or convert him to the views we hold on the rent law of Bengal—a subject on which so many have differed. My object has been solely to defend our conduct against the censures contained in Sir Richard Garth's minute—censures which, I submit, should never have been passed; and if I succeed in convincing others that they are not justified and there is at least some authority on our side, I shall be satisfied.

As to the personal attacks which have been made on Mr. Mackenzie and myself, I have already said that I have too much respect for Sir Richard Garth, too much regard for Mr. Mackenzie and myself, to answer them, and I leave those who are acquainted with Sir Richard Garth and ourselves to determine how far the position which he has assumed towards us is justifiable.

J. O'KINEALY.

Memorandum with reference to SIR RICHARD GARTH'S *Minute of 6th September* 1882.

SIR RICHARD GARTH has now intimated that the copy of his "Minute* on the proposed Rent Law for Bengal," forwarded to the Private Secretary, was intended to be communicated officially to Government. I crave permission, therefore, as one of the two officers specially named by the Chief Justice in his Minute, to submit a brief memorandum on the subject by way of criticism and reply. The statements made by him with regard to my personal connection with the rent measure, and with regard to the history and character of the measure itself, ought not, I think, to be allowed by me to pass altogether unchallenged.

* Dated London, 6th September 1882.

2. The Chief Justice describes his Minute as a "humble but earnest effort to protect the landlords of Bengal from what appears to him nothing short of impending ruin." He declares the Rent Bill to be a measure "calculated to deprive the landlords unjustly and unnecessarily of rights which the courts of law have always considered to be their due." He views "with horror and dismay its revolutionary provisions." It appears to him "absolutely cruel to sacrifice wantonly and unnecessarily the rights of one section of the community for the supposed benefit of another; to violate laws and usages which have been sanctioned by the Courts and the Legislature for nearly a century; to unrip a solemn settlement of vexed questions which was made by the Bengal Legislature (?) no later than twenty-three years ago; and all this, not for the purpose of meeting any actual complaints, or rectifying any proved abuses, but merely to place the ryots in a position which certain well-meaning, but as he thinks mistaken, members of the Rent Commission imagine that they occupied in the year 1793."

He calls upon the landlords to awake to their danger; and he prays "that the policy of confiscation which has borne and is bearing still such terrible fruit in Ireland may be averted, by the blessing of God, from our Indian possessions."

The minute has been translated into the vernacular and circulated to every district in Bengal; and I am credibly informed that its effect is already manifest in a fall of the sale-value of landed property; and increasing difficulty in the leasing of land on permanent sub-tenure.

3. The situation is no doubt serious when the Chief Justice of the Province thinks it his duty to use language like this of any Government measure; and when he not only makes these charges in general terms, but, in the face of the public, impeaches two officers of Government by name as the authors and instigators of all the mischief, describing them as "pretending" to justify their views by "as transparent a pretext as ever was presented to the public," and again as "thrusting a blind pretence down the throats of an intelligent people"—a pretence which has, nevertheless, imposed upon the Government—it becomes necessary to enquire closely into the nature of the arguments by which the Chief Justice supports his statements, and into the justice of the imputations directed against individuals.

4. The minute opens with an excuse for the tardy entry which the Chief Justice himself makes upon the arena of discussion. He admits that the Judges of the High Court had been requested more than once by the Government of Bengal to state their views upon the proposed new Rent Law, and he expresses "regret that, as things have turned out, this request should not have been earlier complied with."

"But," he continues, "to obtain anything like a collective opinion from the Court upon so large a subject would have occupied more time than the Judges had to spare; and I am afraid that individual Judges have, like myself, felt a disinclination to oppose what were generally known to be the strong views of Sir Ashley Eden in favour of the ryots until those views had assumed something like a definite shape."

He goes on to explain :—

"The Bill, as it was first drafted by the Rent Commission, differed in many important respects from that which has since been prepared by Mr. Reynolds; and we are now in still greater uncertainty as to what is really proposed, because we learnt that Mr. Reynolds' draft was again materially altered before it was sent to the Government of India; and that it has now been submitted, with still further alterations, for the consideration of the Secretary of State."

He adds :—

"It is true that through Sir Ashley Eden's kindness, which I gratefully acknowledge, I was allowed a perusal of the Bill before it left the Bengal Office; but as this was for my private information only, I do not feel at liberty to discuss it publicly in any other shape than that in which it was presented to the public.

"This method of dealing with important legislative measures, however much it may be in accordance with practice and precedent, is, I venture to think, inconvenient. It places myself and others, who may wish to discuss the provisions of the Bill in its latest phase, in a position of considerable difficulty, and it seems hardly fair to those classes of the community whose interests may be most seriously threatened.

"The Bill, for aught we know, may now be submitted to the Secretary of State in a form which the Bengal public have never seen, and upon which they have had no opportunity of making a single comment. In this form it will be discussed, and possibly approved, at the India Office; and if it is then sent back to this country to be dealt with in accordance with the views of the Secretary of State, it is clear that those classes whose interests it is calculated to injure may be placed at very great disadvantage.

It is, therefore, to be hoped that, under such circumstances, no attempt will be made to force the Bill unduly upon the Bengal Legislature until the public have had a fair opportunity, after reading all that has been said about it, both here and in England, of opposing such of its provisions as may seem to them unjust or inexpedient."

5. Now, with regard to the whole of this, I may remark that it was in July 1880 that the Bengal Government first addressed the High Court, forwarding, for their collective criticism, the Rent Commissioners' Report and Draft Bill. It again addressed the Judges in February 1881, when forwarding Mr. Reynolds' Draft Bill and Explanatory Memorandum. No reply was received to either communication. Sir Ashley Eden, however, in submitting to the Government of India his final recommendations, explained this fact by stating that "several of the Judges were of opinion that it was for the Government to determine the policy of the Rent Law, and for the Court to advise hereafter as to the forms of law by which it might be proposed to give effect to that policy." It is now, therefore, two years and a quarter since the case was referred to the Court, and the Court as a body have consistently declined to discuss it. The views of the Bengal Government on the ryot question were known to the public before the Rent Commission ever sat. The opinions bearing directly upon the Report and Bill drawn up by that Commission fill two thick folio volumes. There is not a point of any radical importance in connection with the subject that has not been keenly debated by able advocates on either side. It is much to be regretted that a mere doubt as to the precise mode in which well-defined views would eventually find legislative expression induced the Chief Justice to hold back until the eleventh hour such emphatic condemnation as we now find him pronouncing upon the principles of the Bill, especially as he holds that the questions at issue are not merely (as his colleagues say) "matters of State policy," but are "intimately connected with the law and its administration." It is still more to be regretted that his "disinclination to oppose what were generally known to be the strong views of Sir Ashley Eden in favour of the ryots" led him to keep such long silence, seeing that those views involved in his judgment the "impending ruin" of the landlords of Bengal, and embodied a "policy of confiscation" calculated to "bear terrible fruit." The suggestion that the Government has been preparing in secret a scheme for the destruction of the rights of the zemindars will appear extraordinary to all who have any knowledge of the rent controversy that has now been going on in the Press, the Bengal Council, and the Gazettes for many years past. When the Bill, as finally settled, is introduced, no doubt ample time will be given to discuss its details; but it will, I may safely prophesy, contain no new principles—nothing that has not been already subjected to the most searching criticism by the organs and advocates of the zemindars—nothing that Sir Richard Garth has not had before him any time these last three years.

6. The Chief Justice names me and my friend Mr. Justice O'Kinealy at the very outset of his Minute, and devotes some six pages or so to stating our case from his own point of view. He describes us as trampling under foot all authority, legislation, and case law; as setting up some wild opinions of our own, inconsistent with the opinions and the policy of the last three generations and with the laws and usages which have prevailed in Bengal since the time of the Permanent Settlement; as endeavouring *avowedly* to revolutionise, according to notions of our own, the whole land settlement of Bengal. I have looked in vain for any indication that the Chief Justice has done us the honour to read with any care, or even to read through the Notes and Memoranda in which Mr. O'Kinealy and I have given our reasons for the faith that is in us. Had he done so, he would have seen that, so far from posing as ourselves authorities, we rely absolutely upon the authorities, the legislation, and the case law of the past. We have no new gospel to preach. We have after careful study and enquiry come to take a certain very clear and definite view of the great ryot question. But there is nothing original in our position. We disclaim entirely any special credit, and deprecate as decidedly any special censure on account of this. There are scores of able Revenue Officers all over India now, there have been hundreds in the past, holding and advocating views indentical with ours. Our work has simply been to apply to the case before us the well-founded principles that others had long ago made plain. Sir Richard Garth adduces no authorities on the other side, controverts none of our arguments, does not even seem to be aware of the great cloud of witnesses we have brought for ward to prove

our case. He seems to think that all authorities must, as a matter of course, be on his side, and he contends himself with asserting this emphatically and repeatedly.

7. I need not here go again over ground so effectively occupied by Mr. O'Kinealy in his Minute of the 16th December 1882. I may, however, point out that it is not correct to say that we were opposed in many material respects by the rest of our colleagues on the Rent Commission. It is practically to the proposals of the Rent Commission that the Chief Justice finds himself in the first instance opposed. If we had been in a minority there, the report would never have been framed as it is. But, in fact, on the great question of maintaining and extending the protection afforded to ryots (as on all other important points) the majority of the Commission were substantially agreed, though there was naturally enough some difference of opinion as to points in the argument, and as to how the desired result could best be brought about. It was at the ninth meeting of the Commission that the question of the status of the resident ryots was first formally raised, and to such good purpose that the President (Mr. Dampier) observed that "if he could be satisfied that what had been proposed was workable in practice, he would vote for it." At the fifteenth meeting the members voted, and settled the proposals for extending the practical benefits of tenant right to what I may safely term the whole body of settled cultivators. There were at that meeting four divisions, in two of which the two zemindari members stood alone, while in one Mr. Field supported them and in the fourth Mr. Harrison,—all the rest of the Commission voting with Mr. O'Kinealy and myself. I was not myself satisfied with the solution then adopted, and stated my reasons in my Minute attached to the Rent Commission's Report My view was that the principles accepted pointed to a much simpler remedy than that put forward by the Commission, and the Bengal Government, on the advice of many of it best officers, eventually supported me in this. But in respect of the crucial proposal to recognise tenant right in the case of others than the 12 years' ryot of Act X of 1859, the majority of the Commission were at one; while Mr. Harrison, to whom Sir Richard Garth refers as though that gentleman agreed with *him*, wished to protect the actual cultivator whoever he might be—a far more radical proposal than any ever made by either Mr. O'Kinealy or myself. Mr. Dampier, the President, was at times by no means disinclined to concur with Mr. Harrison. Sir Richard Garth makes much of the zemindari members, whose advocate on this occasion he desires to be. I have not a word to say against either of them, or the manner in which they have stated their views, though I differ from them *toto cœlo* upon many points. But the Chief Justice has not considered the fact that the Native judicial member, who is deeply read in Indian law and well acquainted with Indian custom, and has for his abilities been since selected by Government and the High Court as the first Bengali District Judge, supported Mr. O'Kinealy and myself on every material point throughout the whole business of the Commission. (See also his Note at page 494 of the proceedings.)

8. Sir Richard Garth states, correctly enough, that the whole question of legislation at the present time arose originally out of the action of the landlords themselves, who demanded effective means of collecting their rents and securing at the same time progressive enhancements. The complaints of the ryots are not, in his opinion, so well defined They have been put forward not, he says, by the ryots themselves, but "for the most part by executive officers whose duty it was to quell the disturbances which arose from time to time in the agricultural districts, and to inquire into the causes which led to them." Disturbance is a very objectionable but effective way of representing grievances, and the Chief Justice himself admits that grievances do exist. But he nevertheless reiterates the charge that the substantive changes in the law which have, according to him, been foisted into the measure by Mr. O'Kinealy and myself were never asked for or required by any body, least of all by the ryots themselves. The true history of the case—one much less flattering to us and less derogatory to the independent judgment of the superior authorities—will be found in the Memorandum printed as Appendix I of the Bengal Government letter of 27th July 1881. I need only refer to that paper and to the reports of district officers upon the rent question *passim*, to show the manner in which the imperative necessity of rent legislation upon the lines of defining and protecting more completely the occupancy right, has been forced by the stern logic of facts upon a reluctant Government.

It may be useful reproduce here the conclusions arrived at by the High Court, including Sir Richard Garth himself, in 1879, as to the party which has generally been most to blame in cases of rent disputes in Bengal, and as to the causes which ordinarily give rise to such disputes I quote from a letter addressed by the High Court to the Government of Bengal :—

High Court's letter No. 1707, dated 4th March 1879, paragraph 13.

"The Judges desire to reiterate once more what they have repeatedly asserted before, that organized resistance to the payment of rent by ryots is invariably due to systematic efforts to enhance them with or without cause; that bad relations between zemindar and ryot are almost universally due either to the property changing hands and to the speculator's attempt to augment the yield of his purchase or to the zemindar allowing some one, a middleman, to come between him and the ryots; the middleman taluqdar, or whatever he be called, being left very commonly to raise the profit which he pays by putting pressure on the ryots.

Paragraph 14.

"The Judges desire to express the astonishment that they feel at the observations frequently made on the subject of riots arising out of rent disputes. Zemindars and perhaps officials are apt to think that the ryots are to blame. Now it seems to the Court that from the nature of the case the blame must generally rest with the zemindar Of course the Judges do not mean to say that he is not more or less frequently subjected to great annoyance and perhaps to loss; but so long as he confines himself to legal measures for enforcing his right there cannot ordinarily be a riot. If rent is refused, he can sue; if he is resisted in distraining, he can apply to the Court for assistance; if he is entitled to measure lands and is opposed, he can do the same. There is a legal remedy in each case, and if there is a riot, it can hardly be that it does not result from his

impatience, pride, and preference for illegal courses. An obstinate ryot can be coerced, but he can legally only be coerced by the aid of the Court; if no coercion is attempted, there is no occasion for a riot. There may be exceptional cases in which the tenants take the initiative and resort to violence to drive out or intimidate the agents of a zemindar acting strictly within the letter of the law; but if there are such, the Judges believe them to be quite exceptional, and their experience founded on the criminal cases that come before the Court bear them out in saying that it is very rarely that violence of this class is wholly unprovoked.

Paragraph 20.

"An enhancement suit, regular or irregular, is a proceeding of vital importance to a tenant: if he has a right to hold free of enhancement, and fails to prove it, he is simply ruined; whereas if a landlord fails to establish a claim to enhancement, even if really a just one, he is no worse off than he was before as regards his actual income. If therefore there is a bias towards the ryot, which the Judges do not admit, it is by no means an unnatural one; it is but the natural feeling which leads to the protection of the weaker against the stronger, so far as to require the latter to make out a clear case, which indeed every plaintiff is bound to do. There is, as the old maxim has it, a certain advantage in the position of a defendant which those who suffer under the corresponding disadvantage unfairly, but not unnaturally, stigmatize as the result of bias."

The chief object of the proposed legislation is to strike at the root of these disputes by putting the relations of zemindar and ryot and the question of rent enhancement on a clear and well ascertained basis for the future.

9. At page 7 of his Minute Sir Richard Garth adduces two instances to illustrate what appears to him the unequal measure meted out to landlords and ryots respectively by the Rent Commission and the Government. The first refers to the maintenance of section 4 of Act X of 1859, and the second to the question of subletting. Section 4 provides that a holding for twenty years at the same rate of rent shall create a presumption in favour of the ryot that the rent had been unchanged from the Permanant Settlement. The Rent Commission, for the reasons stated in paragraph 24 of their Report, maintained that provision with one or two important limitations (overlooked by Sir Richard Garth). The Bengal Government decided to detain the section *pro tempore*; but at paragraph 17 of their letter of the 27th July 1881, it will be seen that the Lieutenant-Governor accepted a suggestion (put forward, I may remark, by myself) that "the best way of remedying any injustice to landlords arising from the presumption would be to provide for the registration of all existing privileged tenures within (say) two years from the passing of the Act, and then to do away with the presumption altogether." Sir Richard Grath, though considering the rule orginally a mistake, would retain the section as it stands, merely because it has been in force so long. Which line of action is most favourable to the zimindars and most consonant with good policy? As regards subletting, we are all agreed that that is the most difficulty subject that we have to deal with. Sir Richard Garth is not himself prepared to interfere with it; but he objects to our giving legislative recognition to what nevertheless he admits to be a universal and ancient custom. It was the business of the Rent Commission to prepare a complete Rent Code, and not to shirk any difficulty known to exist. We should have been thankful for assistance from any authority in the solution of this most intricate problem, and can only regret that the Chief Justice is not prepared even now to suggest anything. It was impossible to ignore the question or we should gladly have done so.

10. At page 8 of his Minute Sir Richard Garth takes up the examination of what he terms the "unjustifiable changes" proposed in the draft Bills; and first he objects to the extension of the right of occupancy beyond the limits laid down by Act X of 1859. I do not propose to follow him in detail through this portion of his Minute or to go again over well-beaten ground, especially as I cannot find that he brings anything to the discussion beyond the assertion of his own personal opinion. It is easy to say that the ryots never possessed the privileges which it is now proposed to recognise; but Sir Richard Garth makes no attempt to prove this, or to meet the detailed evidence to the contrary. No Bengal revenue officer will be found willing to admit that it is impossible to discover what were the status and qualification of a khudkasht ryot in 1793. Sir Richard Garth reads an acknowledgment on my part of the difficulty of defining satisfactorily for legal purposes what should constitute a resident ryot *at the present day* as an admission that no one knows what the resident ryot was entitled to in 1793. The Chief Justice cannot indeed suppose that anything, save long prescription, entitled a ryot to be treated as a resident. Mr. O'Kinealy and I have endeavoured to meet and answer this view, and produced a mass of authorities to the contrary. Since the Rent Commission parted, we have discovered more evidence to the same effect; and the question is after all one to be settled on evidence, not on individual theories of what is probable, or on a purely legal interpretation of casual phrases used in non-legal documents. (Sir J. Shore and Sir Richard Garth for instance mean very different things by the words "prescriptive title" when applied to ryots' holdings.) We have shown how the twelve years' term got into Act X of 1859. Experience has proved that its effect has been disastrous to the ancient rights of the ryots as a class, to *those rights which the framers of Act X of* 1859 *admitted that they even at that time possessed.* I have explained (in Appendix I of the Bengal letter) how the amendment of Act X has long been seen to be necessary, and how that amendment has unfortunately been postponed. The mass of opinion in favour of going behind the so-called settlement of 1859 is positively overwhelming. It is, of course, from the landlord's point of view a pity that the ryots and their friends are not satisfied with that settlement of their rights. But it has been shown conclusively that there was no intention of "settling" those rights in the precise manner suggested, and strong reasons have been given for holding that in the interest of both zemindars and ryots the law stands in need of radical amendment. That is our case, and there is no attempt to meet it.

I may notice here in passing a mistake into which the Chief Justice has fallen at page 8 of his Minute, where he states that the provision for compensating on eviction ryots who had held for over three and less than twelve years which was supported by the Rent Commission, was abandoned in Mr. Reynolds' Bill because it had been "universally condemned." It was in fact abandoned only because the basis of the occupancy right had been made by Mr. Reynolds so wide as to render any such provision unnecessary.

11. Sir Richard Garth on page 10 thinks it extremely probable that the period of prescription required to constitute a resident ryot differed in different parts of the country; but he is quite clear that some considerable term was required. Admitting, for the sake of argument only, that long residence may have been necessary in order to the recognition of a ryot as a khudkasht of the village, we still reply that the point is unimportant; for we contend further that, in the matter of rates of rent and protection from eviction, the old law and custom of Bengal made no practical distinction between resident and non-resident ryots, and that all ryots without distinction of class (not being mere casuals or nomads) were entitled to hold their lands without disturbance, *so long as they paid rents not less than the established rates.* That is the real case which our opponents have to meet.

12. I do not think it necessary to discuss Sir Richard Garth's analysis of Mr. Reynolds' draft Bill, as the proposals of that Bill on this particular point of the definition of the occupancy ryot will probably not be those eventually adopted by Government. It is enough to say that what, as we understand matters, the Government has all along wished to secure is that the occupancy right shall attach to the settled cultivators. It desires to exclude land jobbers and mahajans. It aims at creating a strong and well-to-do peasant class, able to resist the vicissitudes of seasons, and to pay a fair rent to the landlords. All suggestions to secure this end by improved definition will no doubt be gladly welcomed. It will certainly not be secured by reverting to Act X of 1859. There are sundry checks and precautionary clauses in the Bill, even as it stands, designed to guard against the mahajan, but to these Sir Richard Garth makes no allusion. I need not refer to them here, as we are all agreed about keeping the money-lender out if we can. The object of the Rent Commission and of all concerned in the framing of these measures is to secure the ordinary cultivating ryot in the quiet possession of his fields, and, while protecting him against rack-rents, to make him pay regularly the authoritatively recognised rates of his neighbourhood. At the same time it is proposed to give the zemindars effective means of regularly enhancing their rents as prices rise—a power they now have only in name; and any reasonable suggestions tending to facilitate the prompt collection of their just rents will doubtless be acceptable. Meantime the Bill has done for them in this respect everything that the most anxious consideration could devise. Why this scheme, which has met as a whole with the concurrence of all the best officers of Government in Bengal, and of the Local Government itself, should be "cruelly unjust to landlords" Sir Richard Garth does not stay to explain.

13. A "right of occupancy" in the view of Mr. O'Kinealy and myself, and those who think with us, merely implies that the ryot is protected against arbitrary eviction (at the will of his landlord), *so long as he pays the established rate of rent*; and at page 12 of his Minute Sir Richard Garth admits that it is "most desirable that a measure of rent corresponding to the old pergana rates should be ascertained (by the executive authorities) in all parts of the country with the least possible delay," and that those rates ought to be enforced in the case of occupancy ryots, and in the case of non-occupancy ryots in the absence of any agreement to the contrary.

This admission, in fact, leaves as the only important issues between us the question as to what should be the precise limits and definition of the occupancy class, and whether the Indian ryot is to be looked upon as mere contract tenant.

14. Before passing on from this portion of the Minute I may advert to one or two points raised by the Chief Justice's remarks on page 11. He writes:—

"On the other hand, what will be the position of the landlord under this Bill? He is deprived of the power of disposing of his land at the best price he can get. He cannot choose his own tenants, because the ryot, to whom he lets, can transfer the land to any one he pleases; he has no longer any interest in the improvement of his property; and the only advantage he has from it is the rent, which at most is 25 per cent. of the value of the gross produce.

"And then consider what has to be paid out of this 25 per cent.? In the first place, the Government revenue; in the next, irrigation and embankment rates; in the next, collection charges; and the residue, small as it may be, will generally have to be divided between the zemindar, and perhaps three or four tenure-holders, who intervene between him and the occupancy ryot.

"Under these circumstances, the sooner zemindars and tenure-holders can place themselves in the position of the occupancy ryots, the better for them. They have no right, under the Act, to take their own ryoti land into cultivation, nor to buy up occupancy rights in their own estates or tenures; but they may take their neighbour's ryoti lands, and cultivate them by their servants or sub-tenants; and they may buy up, to any extent they please, their neighbour's rights of occupancy.

"Now my object in drawing this comparison is twofold. I wish to show—

"*1st.*—How entirely the landlords will be deprived by the proposed Bill of their former rights and position; and how little interest they will have for the future in the welfare and improvement of their property; and

"*2ndly.*—How completely the class of persons, who in the future would hold the status of the occupancy ryot, would have the advantage, both as regards profits and control, over all others interested in the land. The profits and the power which you are taking from the landlord you are giving to the occupancy ryot; and liberty of contract, which you think it is unsafe to entrust to the highest and best educated noblemen in the province, you are committing with the utmost confidence to the class who will fill the status of occupancy ryots."

These paragraphs assume that the land is the landlord's absolutely and that the ryots have no interest in it, save such as they derive from him,—a theory entirely at variance with

with recognised Indian Land Law, and never in practice put forward even by the zemindars themselves. If a zemindar, for instance, wants ryoti land for a garden or tank he generally takes a lease from his own ryot or comes to some other arrangement with him. The Bill protects the landlord against the intrusion of hostile tenants by provisions for pre-emption to which no reference is here made. The errors in the description of the landlord's payments have been pointed out by Mr. O'Kinealy. But it is in their last clause that the mistakes in these paragraphs culminate. There is nothing in the Bill to prevent a landlord from cultivating any ryoti land in his estate, so long as he does not convert it into *khamar* or private land in which future tenants shall be unable to enjoy occupancy rights. While the landlord holds it himself he can treat it as he pleases. He certainly *cannot*, as the Bill stands, buy occupancy rights in his neighbour's lands or cultivate his neighbour's ryoti lands either by his servants or sub-tenants. At any rate his neighbour has ample power to prevent his doing so. The landlords are not deprived by the Bill of any rights save that of arbitrarily evicting their paying tenants. The profits of the land the Bill divides in an equitable manner between the two persons interested in the soil, the landlord and the tenant. The remarks with reference to liberty of contracts I am unable to follow. I do not understand how any power of contract such as is here referred to could be entrusted to landlords and not to ryots or *vice versâ*. The contracts in question are not contracts between landlords or noblemen *inter se*, or between ryot and ryot; but between landlords on the one side and ryots on the other. The only new power distinctly given to the occupancy ryot by the Bill is the power of sale which he already in practice enjoys. This is in fact merely the legislative recognition of an indisputable fact.

15. The second point discussed by Sir Richard Garth is the maximum limit proposed by the Rent Commission for money rents. That is a matter as to which we may safely assume that the Rent Commission, and the numerous revenue officers who have reported in favour of the limit, can speak from practical knowledge. The zemindars themselves will only be too glad to get anything approaching that limit, and certainly will not do so in some parts of the country for many years to come

16. In the third place, Sir Richard Girth objects to the chapter on the letting of land for building purposes, observing that it has nothing to do with cultivating ryots and their rights. It is not clear whether he is here objecting to the Rent Commission's draft, or to the greatly modified provisions in Mr. Reynolds' drafts accepted by Government. In any case he seems entirely to have overlooked the fact that the chapter in its operation will in practice be almost absolutely limited to ryots' homesteads, and that it does not in any case extend to towns.

17. Fourthly, Sir Richard Girth objects to making occupancy holdings transferable without the landlords' consent, and asserts that they never yet have been transferable except by special custom, and that such a custom is very rarely proved. There is a mass of evidence to the contrary in the published papers, which the Chief Justice has entirely overlooked. His objection that the landlords are thereby deprived of their privilege of choosing their tenants is met by the provisions for pre-emption which he also entirely overlooks. I can hardly suppose that the proposal to introduce the doctrine of heriot and fines into India, which is apparently made at the top of page 15 of the Minute, will meet with acceptance.

18. Fifthly, he objects to the exemption of occupancy holdings from sale in execution of decrees for debt. I must leave him to reconcile this with his own avowed objection to letting in mahajans. The provision was inserted specially to protect the zemindars, from hostile zemindars, mahajans, and land jobbers; and if it is abandoned, the result would be to aggravate all the evils which the Chief Justice deprecates. The point was fully discussed by the Rent Commission, and may be left for settlement by the Legislature.

19. Lastly, Sir Richard Garth objects that the whole Bill is partial and one-sided, and as proof of this he remarks that, while the rights of occupancy are to be upheld retrospectively, that is, are to prevail in spite of pre-existing contracts voiding them, the enhancement clauses are not to be retrospective, that is, the landlord is to be bound by an existing contract as to rent between him and his ryot. His remarks on this subject serve only to show that the Chief Justice considers a ryot's tenure to be a mere contract tenancy, and that he denies altogether the strong co-proprietary title which Indian authorities conceive to be vested in the settled cultivator. It is, of course impossible to convince an opponent who takes this view that restrictions upon agricultural contracts between zemindar and ryot may be both necessary and politic. We start from absolutely irreconcileable premises. I must be content to rest the case here upon the general consensus of Indian revenue and judicial authorities, against which can be quoted only the strong views of Sir Barnes Peacock, and now those of Sir Richard Garth. These find no support anywhere in India save from Landlords' Associations and persons imbued with purely English notions of proprietary right.

20. Although deeming the Rent Bill in its leading principles mischievous and unnecessary, the Chief Justice nevertheless admits that many of its provisions are extremely "wise and useful and calculated to effect great improvements." He has not, however, informed us what the provisions are which command his approval: and the measure, as a whole, hangs so closely together that it is very difficult to see how it can be dismembered and accepted in part only. But having made this admission Sir Richard Garth goes on to suggest "other provisions which will, he believes, effect still further improvement." These suggestions, with the grounds of them are set out at pages 16, 17 and 18 of his Minute, and need not be quoted here at length. Briefly it may be said that the Chief Justice objects to the harassment

of landlords and ryots caused by "the systematic way in which rival claimants for large properties are "constantly endeavouring to contest their rights *inter se* by means of suits against the ryots." After explaining the procedure he remarks—

"Now all this is absolutely wrong; but so long as the law remains in its present state, the Courts cannot prevent the mischief. The Legislature ought to provide as far as possible, that questions of title should never be tried in a rent-suit; and in the class of cases to which I have just been referring, the evil may be easily prevented.

"All that is required for the purpose is a slight extension of the provisions of Chapter VII of the proposed Bill. Let the registered owner of each estate or tenure be considered as against the ryots to be the lawful owner of that estate or tenure. *Let the ryots be bound to pay their rents to him, and to no one else.* They would thus never be in doubt as to who their real landlord is; they would have no excuse for not paying their rents; and they would never be in a position, in the class of cases to which I have referred, to raise any question of title.

"On the other hand, no unregistered person claiming the estate or tenure could ever harass the ryots, or claim the estate through them. He must take what is obviously the straightforward and proper course, of suing the registered owner; and if he succeeds in that suit he will be entitled to be registered at once and to recover from the ryots all rents which may become due from the time of his registration. Any rent which may have become due before that time will be made a question of mesne profits as between the parties to the suit, and the ryots will not be affected or disquieted by any such question."

* * * * * * *

"I believe that if the Government could carry out this simple plan, it would prove the greatest possible blessing to all classes of the agricultural community. It would not only simplify the enforcement of rents as between ryots and their immediate landlords, but as between all grades of the agricultural community, from the highest zemindar to the lowest sub-ryot. The great object of course would be to perfect the system of registration, which has already been inaugurated by the Registration Act, and made almost universal by the late Act for the transfer of property."

The Chief Justice in these remarks certainly refers to the existing system of registration, meaning evidently the system of registration of assurances under Act III of 1877. (This is clear from the reference to the Transfer of Property Act, and from other Minutes upon the registration of transactions affecting immoveable which the Chief Justice has laid before Government.)

He has apparently overlooked altogether the provisions of the Bengal Land Registration Act of 1876, of which I may reproduce the following sections:—

Proprietor and manager to register within specified time.

38. Every proprietor of an estate or revenue-free property or of any interest therein, respectively being in possession of such estate, property, or interest, at the commencement of this Act,

every joint proprietor of an estate or revenue-free property being in charge of such estate or property or of any interest therein, respectively, on behalf of the other proprietors thereof, at the commencement of this Act,

and every person being manager of an estate or revenue-free property, or of any interest therein, respectively, on behalf of a proprietor thereof, at the commencement of this Act,

shall, if his name and the character and extent of his interest have not already been registered, make application in the manner hereinafter provided for the registration of his name and of the character and extent of his interest as such proprietor, or manager, to the Collector of the district on the General Register of which such estate or property is borne, or to any other officer who may have been empowered by the Collector to receive such application, within such time as the Lieutenant-Governor may fix as hereinafter provided.

Persons succeeding to proprietary right in, or management of, estates to give information within six months.

42. Every person succeeding, after the commencement of this Act, to any proprietary right in any estate or revenue-free property, whether by purchase, inheritance, gift, or otherwise;

every joint proprietor of an estate or revenue-free property, assuming charge after such commencement of such estate or property, or of any interest therein, respectively, on behalf of the other proprietors thereof;

and every person assuming charge after such commencement of any estate or revenue-free property or of any interest therein, respectively, as manager,

shall within six months from the date of such succession or assumption of charge, make application in the manner hereinafter provided to the Collector of the district on the General Register of which such estate or property is borne, or to any other officer who may have been empowered by such Collector to receive such applications, for registration of his name and of the character and extent of his interest, as such proprietor or manager.

No person bound to pay rent in excess of recorded interest of claimant.

78. No person shall be bound to pay rent to any person claiming such rent as proprietor, or manager, of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act;

and no person being liable to pay rent to two or more such proprietors, managers or mortgagees holding in common tenancy, shall be bound to pay to any one such proprietor, manager, or mortgagee more than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor, manager, or mortgagee is registered bears to the entire estate or revenue-free property.

Indemnity to persons paying rent to registered proprietor, manager, or mortgagee.

79. The receipt of any proprietor, manager, or mortgagee, whose name and the extent of whose interest is registered under this Act, shall afford full indemnity to any person paying rent to such proprietor, manager, or mortgagee.

It will be evident that as the law now stands in Bengal the ryot is fully protected. He is not *bound* to pay to any save a registered proprietor, and the receipt of such proprietor is a good receipt; but he is not debarred from paying to any other whom he may know to be his real landlord. All the disputes as to title arising out of the Act of 1876 have already been decided or nearly so. The Chief Justice would now however go further, and provide that the ryots shall be bound to pay their rent to the registered proprietor and to no one else.

They are to have no option or discretion under any circumstances. They are not to be allowed to plead that the landlord's title has passed by sale or tranfer or to pay to a landlord in possession but not yet registered. Under this arrangement an insolvent owner might gather in all the profits of the land, until prevented by regular civil suits which it might take years to decide.

Again under the Bills as drafted provision is made for the deposit of rent by a tenant whenever he entertains a *bonâ fide* doubt as to the person entitled to receive such rent.

The remedy put forward by the Chief Justice appears therefore to be for the most part not new, and so far as it is new to be undesirable.

21. In conclusion I submit that the Minute of the Chief Justice fails on many important points to exhibit that accuracy of statement, weight of argument, and insight into the Bengal Rent question, which would warrant the Government and the public in accepting his conclusions.

The Famine Commission, and the Government of Bengal, on the testimony of all the ablest revenue officers in the country, have decided that it is impossible any longer for the Government to postpone the determination of the points so long in dispute between landlords and tenants in Bengal; and that the time has come to redeem the pledge given at the Permanent Settlement, that the Governor-General in Council would, upon cause shown, "enact such regulations as he might think necessary for the protection and welfare of the dependant talukdars, ryots and other cultivators of the soil," the class who "from their situation are most helpless."

After all, however, the intervention will be as much for the benefit of the landlords as for the security of the tenants. The Bill recognises fully the right of the landlords to receive rents advancing in amount with the increasing value of the produce—a right they never had before 1859. It provides for them an easy mode of securing this, and gives to their estates a value that under the present law they never would possess. And all that is being done in favour of the ryots is to protect them against the horrors of arbitrary eviction, and to secure to them that reasonable share in the profits of cultivation which is essential to the stability of an argricultural community, and the undoubted and ancient right of the Bengal peasantry.

The 22nd December 1882. A. MACKENZIE.

Minute by the HON'BLE JUSTICE CUNNINGHAM, *on the Bengal Rent Bill.*

OUR opinion has been asked on this Bill, and a most valuable collection of letters and memoranda on the subject has been furnished to us, which make it possible to form a more precise conception of the questions involved than was previously attainable. We have now, first, Mr. Field's excellent Digest of the existing law; then the Rent Law Commission's Report and Bill and the interesting papers collected in the Appendix; then Mr. Reynolds' memorandum and Bill based upon the various criticisms which the Commission's Bill elicited; and lastly, the opinion - not indeed final, but some way on the road towards finality—of the Bengal Government on the Orignal Bill, and Mr. Reynolds' amendments. A more valuable collection of papers has, I believe, never been got together in India, nor a great subject been discussed with research and ability more worthy of its transcendant importance.

As I hope that the High Court may think it right to express a collective opinion, on some points at any rate of the proposed legislation, it may be convenient if I state concisely the conclusions which the papers before us seem to me to establish beyond all reasonable doubt, and the stage which the controversy appears at present to have reached. If in some instances I repeat facts which are too familiar to require repitition, it is because erroneous and misleading statements on these matters continue to be, despite our increasing knowledge, courageously and pertinaciously made, and it is convenient accordingly to have at hand the precise reference necessary for immediate refutation.

The classes interested in the soil in India are (*a*) the Government, (*b*) the proprietors or revenue-payers, and (*c*) tenants or rent-payers. This last class contains a great variety of holders, and is itself divided into two main divisions, viz. (*a*) tenure-holders, who represent every intermediate interest between a proprietor and the ryot; and (*b*) ryots, who represent persons originally let into occupation for the immediate purpose of cultivation, and who to a great extent are still the actual cultivators of the soil, though korfas or sub-ryots are not uncommon. Each of these divisions, again, presents numerous varieties. "Tenure-holders" range from a holder, who may be to all intents and purposes an owner, subject merely to a fixed and unalterable rent charge, to holders who have merely a precarious leasehold interest. "Ryots," too, vary greatly in the character of their interest, some having a right to sit at fixed rents and to be altogether exempt from enhancement, some to sit at rents which are enhanceable only under certain prescribed restrictions; some being mere tenants from year to year. The under-ryots may, as a rule, be said to be tenants from year to year.

The numbers of these various classes are, speaking roundly, as follows:—

There are 130,000 revenue-payers, who pay the Government a land-revenue of about 3½ millions sterling and enjoy a rental officially returned at something over 13 millions sterling. This 3½ millions of revenue is only half a million larger than that fixed at the time of the Permanent Settlement, viz. 3 millions. It is reckoned that, as the zemindar's share was fixed at one-tenth of the gross proceeds of the rent, "the net rental" (*i.e.*, share available for the proprietors after payment of revenue) at that time must have been between £300,000 and £400,000.

While the Government revenue, accordingly, has increased only by half a million, the landlord's share has risen from, say, £350,000 to 9½ millions sterling. But this rental of 13 millions is only an official return for road cess purposes, and is believed by many good judges to represent very inadequately the whole amount which in one way or another the proprietors receive. One writer reckons the entire amount paid annually by the occupants of the soil at between 25 and 30 millions sterling.

This rental is paid from a cultivated area of, say, 55 millions of acres, an area about one-sixth larger than that of the United Kingdom, which has 47½ millions of acres under crops and pasture. The agricultural rental of the United Kingdom, however, is estimated at 67 millions sterling.

The class intermediate between proprietors and ryots, viz tenure-holders, numbers about 750,000, the annual income in the great majority of instances, 620,000, being below £10.

Below this superstructure of revenue-payers and intermediate landlords come the occupants of the soil, the "ryots," about 10 millions in number. The following figures show their general condition:—

Ryots paying over	Rs. 100		25,000 or say $\frac{1}{400}$th of the whole.
" between	"	50—100	120,000
" "	"	20— 50	680,000
" "	"	5— 20	2,800,000
" under	"	5	6,200,000

It thus appears that there are 9 millions of ryots paying a rental below £2 per annum, and of these more than 6 millions pay under 10 shillings, a rental which implies a holding between 2 and 3 acres in extent.

The first fact that strikes one in these figures is the extremely small fraction of the community in whom proprietary rights have been concentrated. They are as 130,000 to more than 10 millions.* This disproportion of numbers cannot be left out of sight in any modifications of the existing law which the State may deem necessary in the general interest of the community. Were it necessary,—which happily it is not,—to subvert existing interests for the purpose of removing otherwise irremoveable grievances, or remedying otherwise irremediable evils, there is abundant precedent for the principle that where the two interests conflict, the interests of the vastly preponderating number must carry the day. As a matter of fact, there is scarcely a continental nation in which it has not been found necessary for the landed aristocracy to surrender a material portion of their rights with a view to the general well-being of other classes.

No such violent remedies are, happily, in question, but it is right, in discussing the question, to keep in sight the fact that the ryots constitute so nearly the entire bulk of the community, and the zemindars so inconsiderable a fraction of it, that, if ever it were ascertained that the interests of the two classes were in hopeless antagonism, it would be the right and duty of the Government to decide that the general well-being of the mass of society must be considered in preference to the interests of a few individuals.

The position taken up by those who have framed the persent Bill, and who now advocate legislation, is, however, the very opposite of any proposal to depart from the law, Their view is that, from one cause or another, we have unintentionally departed from the fundamental law of landlord and tenant in India, as the first British administrators found it, and as the framers of the Permanent Settlement intended to leave it; that by ignorance and mistake in some instances—neglect in others—the natural promptitude and energy of a powerful class in extending its own rights,—the continuous unperceived tendency of the strong to better themselves at the expense of the weak, and of the rich to become richer at the expense of the poor,—the official apathy which condones a convenient abuse,—the natural sympathy of English gentlemen with landlords—that by all these influences the law of the country—as designed and solemnly enunciated at the Permanent Settlement—as again and again, with equal emphasis, explained and announced by the Government, the Legislature and authoritative officials—has been modified in various important particulars, and that the result of these modifications has been in many parts of the Province to alter the relations of landlord and tenant altogether, to the detriment of the latter.

The general character of this modification has been to convert the zemindar from a person empowered, under certain very rigid restrictions, to receive from the occupants of the soil a fixed rental, settled by the Government on ascertained principles, into an arbitrary, absolute proprietor, with full powers to do what he likes with his lands and its cultivators; and to convert the occupants from people whose interest in the land was so distinct as to be described officially as "their property,"—who had a right to sit at certain known rates prescribed by Government,—who were specially protected by every device which the Legislature could contrive, from the attempts of the proprietors to exact any further payments beside the rent so fixed,—and who, so long as they paid this rent, had as undisputed a right to remain in their holdings as the zemindar to enjoy his rents—into mere tenants-at-will liable to enhancement, ejectment, and every other oppression and exaction at the hands of the landlord.

---

* In the United Kingdom landed proprietors are thus divided:—

	Number.	Extent in acres. Millions.
Proprietors of 1,000 acres and upwards	10,900	52
Proprietors holding less than 1,000 acres and not less than 1 acre	303,750	20
	314,650	72

This number is largely in excess of the number of the real number of proprietors, owing to properties being held in more countries than one, *glebe* land, corporation property, &c. On the other hand, the owners of less than one acre would immensely increase the number, though these are scarcely what is meant by "landed proprietor."

This state of things is represented as especially prevalent in Behar. In the eastern districts of Bengal a sturdy race of Muhammadan cultivators, aided by fortunate circumstances, has successfully held, and in some cases, perhaps, more than held, the tenants' position against the landlords. But in the west, and generally throughout all but the eastern districts, the deterioration of the ryots' position and the curtailment of their historical rights is unquestioned. With these two opposite conditions the Government is called to deal. Strong feelings exist on either side: on the one hand, the tenantry have on more than one occasion exhibited a dangerous determination to assert their own rights by force, if necessary; and in East Bengal they do practically from day to day assert them by their known strength and resolution. On the other hand, the landlords have powerful associations, able and accomplished advocates, newspapers devoted to their cause, and they appeal with confidence, and oft-times with success, to the right and wholesome reverence which Englishmen feel for the sanctity of a State guarantee and for the rights of property.

Action of some sort accordingly cannot be with safety delayed. The Bengal Government adopts the view (and with Mr. Mackenzie's Minute it could scarcely do otherwise) that the evidence produced established satisfactorily that since 1863 the necessity for radical revision of Act X of 1859 had been recognised by the Government, the Courts, and the public; that since the Pubna ryots in 1873 this necessity has been generally recognized as *urgent* in the interests as well of the landlords as of tenants; and Sir Ashley Eden concurs in thinking "that the true reason why the rent disputes, which culminated in open violence in 1873, have of late years quieted down is because both parties have been awaiting the action of Government in connection with the substantive amendment of the law." All the elements of disturbance are still existent, and the matter should, he recommends, be taken up forthwith and be settled at leisure, while times are tranquil, rather than be left to be dealt with hereafter, perhaps in the hurry and violence incidental to a serious disturbance.

1st June 1881.
Bengal to India, 27th July 1881, p. 6.

Any discussion as to the relations of landlord and tenant necessarily takes its start from the well-worn controversy as to the attitude assumed by the Government and the position assigned by it to the zemindars in 1793. The papers now collected place the facts in a clearer light and more cogent form than before.

It is impossible, I think, with these facts before us, to doubt that, whatever may have been the tendencies and expressions of particular persons, the general line taken by the Government in the legislation of that period was that of accepting the right and duty "as Sovereign," of "interposing its authority from time to time" as might be necessary to prevent the "ryots being improperly *disturbed in their possessions*, or loaded with unwarrantable exactions," those exactions being any further demand either by way of enhancement or cesses, beyond a definite prescribed rental, described as the "*pergunnah rate*," and those disturbances being attempted ejectment; that the duty of doing this was recognised as incumbent on the ruling power; that the Government announced its rights and its intention of interfering, wherever it deemed it necessary, for the protection and welfare of the cultivators; and that zemindars were distinctly warned that no such interference on the part of Government was to be made a ground, on their part, of objection to the discharge of the revenue which they had agreed to pay; that the claim to "proprietorship" put forward so pertinaciously by the advocates of the zemindars has been again and again repudiated by the ruling power and was *totidem verbis* denounced as mischievous and unsound by the Board of Directors in England; and that the zemindars received these privileges with an express trust to protect and foster the ryots and "keep them contented," and to see that all their employés did the same.

Passing over the difficulties experienced in carrying out the provisions of the Permanent Settlement, the protests of the officials engaged in working it, that its real object was being lost sight of or defeated, and the attempt to remedy its defects, we may come at once to the measure which has given its special form and character to the matter as it now presents itself—Act X of 1859. No Act was ever more egregiously misunderstood, and Mr. Mackenzie has rendered a valuable service in drawing up an account of the way in which it came to be passed and of the subsequent history of the rent question in Bengal. No one can understand the true position of the several parties to the controversy who has not studied the original frame and language of that Bill. Its object was not to codify the law, but to amend one particular branch of it—that relating to the recovery of rent. At the same time it was thought expedient, as its mover* explained, "to re-enact in a clear and distinct form the provisions of the existing law connected with rent suits, and sections 3, 4, and 5 accordingly set forth what had been the law since the time of the Permanent Settlement." Section 3 provided that "hereditary ryots" were entitled to pottahs at those rates; "all other ryots and cultivators" were entitled to pottahs *at the rates established in the pergunnah for similar lands, or if no such rate could be discovered, at the customary rates for similar lands in the vicinity.*

Mr. Currie, 10th October 1857.

Section 4 provided that "every resident ryot and cultivator has a right of occupancy," except in the cases (1) of *sir* lands, leased for a term, or year by year, and (2) lands sublet by an occupancy tenant to a resident cultivator.

Section 5 reserved express agreements as to rent, clearing leases, and right of re-entry, and provided that resident ryots, cultivating lands not previously in their possession, without a pottah, should not acquire a right of occupancy till they had paid rent for three years.

The Select Committee reported that no alteration in the principles of the Bill was necessary; but they recommended in the case of ryots at fixed rents that 20 years' holding at fixed rates should raise a presumption of having held from the time of the Permanent Settlement;

in the case of other ryots the Committee reported that they were entitled to hold at "pergunnah rates;" that this had been admitted to mean "customary and fair rents;" that "khudkast ryots" were spoken of as possessing rights of occupancy, and that "khudkast" was held synonymous with "resident," but that it had been pointed out that "residence is not always a condition of occupancy, and it appears that, after much inquiry, it was prescribed by an order of the Government of the North-Western Provinces in 1856, as most consistent with general practice and recognised rights, that a holding of the same land for 12 years should be held to give a right of occupancy. We have followed this precedent."

This was the origin of the rule that 12 years' continuous holding creates a right of occupancy. At the same time a rule as to enhancement of occupancy tenants was laid down in section 17, three grounds being mentioned—viz., 1, the tenant's rent being lower than of similar tenants for similar lands; 2, that the value of the produce or the productive powers of the land had been increased otherwise than by the tenant's agency; 3, that the area of the holding was ascertained to be larger than that for which he paid rent.

The second of these grounds was passed without discussion, but Mr. Mackenzie points out that it was the first official recognition between Bengal landlords and tenants of the principle that increased value of produce may be a ground of enhancement.* As such, it was calculated to affect the occupancy tenants most injuriously.

Hills vs. Ishwar Ghosh, 24th September 1862.

In 1862, the Chief Justice, in expounding the section, laid down, as his interpretation of the law, that the increased rent was not to be found by ascertaining a proportion between the former produce and former rent; but that rent must be taken, as laid down by English economists, to be the portion of the value of the produce which remains to the owner after all expenses of cultivation, including profits of agricultural capital computed at the ordinary rate, have been defrayed; and he went on to say that when an occupancy tenant became liable to enhancement on the ground of increased value of produce, he was not entitled by the law to have his rent fixed at a lower rate than tenants without a right of occupancy. Had this decision ultimately governed the law, it is obvious that the privileged position of the occupancy tenant would have, sooner or later, entirely disappeared.

It was, however, from the 12 years' rule that the most serious consequences to the ryots' position resulted. This appears to have been adopted, not only without due consideration of its necessary results, but under actual misapprehension of the real purport of the rule which the Select Committee considered themselves to be adopting. The admitted law was that all resident ryots had rights of occupancy; but then it was found that some non-resident ryots had such rights, and it was proposed to meet these cases by adopting a rule, in force in the North-Western Provinces, that an ousted tenant could by summary process recover possession by showing 12 years' occupation. The effect of converting this rule into a general definition of occupancy rights was that, on the one hand, many undoubted occupancy tenants found their title endangered by not being able to prove 12 years' continuous residence; and on the other, that tenants, not otherwise entitled to occupancy rights, were able to claim them whenever they could show residence for the required period.

The unexpected and undesired results of the Act were, in the language of the Lieutenant-Governor of the Province, "wholesale enhancement of rents and ejectment of ryots, who had a customary claim to occupancy, and who under the law as it previously stood, would probably never have been molested."

In 1865 came "the Great Rent Case," in which the Chief Justice adhered to the rule which he had laid down in 1862, and the other Judges adopted the principle of establishing a proportion between the former value and former rent on the one hand, and the present value and present rent on the other.

Act VIII of 1869.

The work thrown on the Revenue authorities owing to Act X of 1859 became yearly heavier, and in 1869 it was decided to transfer rent suits to the Civil Courts,—a change which, whatever its other drawbacks, it appears to be generally agreed, has conduced to the more careful protection of the interests of the tenant. Meanwhile a remarkable change was setting in in parts of East Bengal, where the increasing resources of the tenantry enabled them to buy out the landlords' interest in their holdings. Forty-seven thousand of such cases were reported in 1871-72, and the numbers rose subsequently to an annual average considerably over 100,000. The landlords, on the other hand, meanwhile were meeting the increased powers of the tenantry by a free recourse to irregular cesses; and the extent to which this was carried in Orissa induced the Revenue authorities to recommend the enforcement of a provision in Regulation 7 of 1822, by which an estate could be brought under direct State management "when the continuance in it of the proprietor would be productive of disturbance or otherwise detrimental." Similar irregularities and oppressions were reported elsewhere, and the system of short leases to speculators, which prevailed in Behar, was especially condemned. In 1873 came the agrarian troubles in Pubna, where the Nattore Rajah's estate had been purchased by five zemindars, each of whom had proceeded to turn his purchase to the best account. Stringent executive measures repressed the outbreak; but the enquiries, to which it gave rise, brought out strongly the depth of the ryots' dissatisfaction, the serious invasions of their rights, which had in many instances been attempted by the

Administration Report for 1872-73, section 46, page 17.

* Lord Cornwallis, however, had pointed out that the way, and the only way, in which a landlord could enhance his rents was by inducing his tenants to plant the more valuable crops on which a higher rental was assessed by the pergunnah rate.

zemindars, and the searching remedies which, in the opinion of the authorities, would alone effectually meet the case.

In 1875 Sir R. Temple, much impressed by the difficulty of adjusting rent disputes in the ordinary tribunals, proposed a measure by which such disputes might, on occasion, be transferred to the Revenue authorities. The introduction of the measure was sanctioned by the Secretary of State, who commented, however, on the change of view which had come about since the Act of 1869, one object of which had been to transfer such suits from the Revenue authorities to the Civil Courts. The measure ultimately, with certain modifications, became law as Act VI of 1876, "The Agrarian Disputes Act,"—a measure the usefulness of which has, it appears, been impaired by the fact that it can come into play only on the application of landlord and tenant and on the imminence of agrarian outbreak.

Minute of 16th March 1875.

24th June 1875.

Sir R. Temple, in the Administration Report of 1875-76, indicated one reason of the unsatisfactory working of the existing law, viz. that while it laid down conditions under which alone enhancement could be had, it failed to give any rule or even principle by which its amount could be determined, and that therefore it was impossible for the parties to estimate the probable result of any suit on the subject. And to meet this difficulty the British Indian Association suggested that the rate of the occupancy tenant should be fixed at one-fourth less than that of the tenant-at-will.

Sir R. Temple finally recommended that the average difference in each district between the rents of the occupancy and non-occupancy tenants should be ascertained; that this difference should be apportioned between the landlord and the occupancy tenants,—the rent of occupancy tenants being never more than 20 per cent. lower than that of the tenant-at will, and full value being allowed for improvements. The occupancy tenant's share was to vary in proportion to his length of occupancy. A Bill to this effect was suggested by him to the Government of India in August 1876. A memorial by the zemindars of Eastern Bengal appeared to accept the principle of this Bill, adding that, when there was doubt as to the competition-rent, the occupancy tenant's rent should be fixed at one-fifth of the value of the gross produce; that in no case of enhancement should rent be more than doubled; and that no second enhancement should take place for five years. Before leaving Bengal, however, Sir R. Temple, in view of the objections raised to his Bill, advised that only the procedure portions (those for the more effective realisation of rents) should be proceeded with.

18th April 1876.

5th January 1877.

Such, generally, was the position of the matter when Sir A. Eden took it in hand and directed the enquiries and discussions, the final outcome of which is the Bill forwarded with letter of 27th July 1881.

The general conclusions at which the Government of Bengal has arrived, and which are embodied in the proposed legislation, are—

1. That from 1863 the necessity of a radical revision of Act X of 1859 has been admitted on all hands; that since the Pubna riots in 1873 this necessity has been recognised as urgent, and that the landlords have been as forward as any class in pressing for a change in the law.

§ 12.

2. That Act X of 1859, while opening the door to certain classes of ryots who had no claim to occupancy rights, has on the whole operated to the detriment of the entire body, especially in Behar, where "only the more powerful ryots have succeeded in resisting the landlords' encroachment," where occupancy rights have to a large extent disappeared, and the rents of the great mass of tenantry have been enhanced to twice the former amount within the last 16 years.

§ 22.

3. That the rights originally conferred on the zemindars, whatever else they may have been, were not those of "absolute proprietorship," the Government prescribing a fixed rental to be adjusted by itself according to recognised rules, stringently forbidding any other exaction on the part of the landlords, taking numerous precautions for the protection of the ryots "*in their possessions*," and reserving to itself the right of future interference, should it ever be necessary, on their behalf, without such interference giving rise to any claim on the part of the zemindars for abatement of revenue.

§ 20.

4. That the rents of Bengal are, and must, in existing circumstances, continue to be "customary," not "competitive," in the sense of the word employed by economists,—the real competition being that arising from the necessity of large numbers who must live off the land, and have no alternative but starvation; that it is the duty of the State to regulate this customary rate, and so to fix the extent of beneficial interest left to the ryots, and thus, in the words of a distinguished Revenue Officer, to recognize "the ryot's right, founded on the most ancient authentic records and uninterrupted prescriptive usage, through a succession of Governments, native and foreign, from ancient times to our own, to have their payments fixed by the authority of Government."

§ 26.

§ 28.

5. That these occupancy rights belong by the old law and custom to the gross mass of the resident ryots, as laid down by the highest authorities; *e. g.*, Mr. Holt Mackenzie in 1832 and Sir William Muir, who says, "I am satisfied that the khudkast or resident ryot culti-

§ 30.

Mr. Mackenzie's note on Act X, p. 47.

vator of Bengal was the ordinary type of hereditary or proprietary ryots common throughout India. In fact, it appears to be admitted by the chief spokesman of the zemindars that khudkast ryots of all degrees always had an occupancy right."

Page 48.

6 That the present time affords the best opportunity for legislation,

The means by which the Government proposes to meet these obligations are—

1. To give to all "resident" ryots occupancy rights, putting a liberal construction on the word "resident."

2. To provide for enhancement of occupancy tenants' rates, by preserving the existing rules as to enhancement, but making those rules workable by having an official table of the rent and prices drawn up in each district, by which claims to enhancement can be adjusted by specially appointed tribunals. There would, in fact, be a sort of rent-settlement conducted by local officials of experience, by which the customary rates in each locality would be ascertained and declared.

§ 29.

§ 14.

3. The rents thus declared just and equitable would be binding on the landlord, no private contract being allowed to supersede them.

§ 24.

4. To guard against the conversion by the landlord of ryotee land, *i. e.*, land over which occupancy rights exist, or can be acquired, into "khamar," nij-jote or sir land, over which the landlord's proprietary rights exclude the growth of any subordinate interests. "Khamar" lands appear to have been originally merely the surplus unreclaimed land of the village, which the landlord was allowed, during the continuance of his revenue engagement with Government, to cultivate for his own benefit, but which became "ryotee" as cultivators settled on them.

§ 25.

These proposals involve several material departures from the existing law. The most important change is that in the definition and status of the occupancy ryot. The Bill recognise "occupancy rights," not as an exceptional privilege of a favoured class, but as the general, normal, right of the great body of occupants. Every ryot, who has resided for three years in the same village, or in a group of villages included in the survey map within the same exterior boundary, is deemed to have "his fixed habitation in it." A ryot who has his "fixed habitation" in the village, or who has, for three years, had his fixed habitation within two miles of the village in which he claims a right of occupancy, and has held and paid rent for the lands over which the right is claimed, is a ryot with a right of occupancy.

The same privilege will extend to the ryot who has for 12 years before the passing of the Act held, cultivated, and paid rent for the same land, and to the non-occupancy ryot, who, with the landlord's consent, is purchaser or devisee of the holding of an occupancy tenant.

The occupancy ryot will not be able to contract himself out of his rights as between himself and his landlord. His rights are transferable *inter vivos* and heritable or devisable to other occupancy ryots. The landlord's consent, however, is necessary in the case of a transfer or devise to non-occupancy ryots or of a portion only of the holding. The occupancy ryot may not sublet without his landlord's consent.

He will be entitled to sit at "fair and equitable" rates, existing rates being presumed to be "fair and equitable" till the contrary is shown. The rent of the occupancy tenant, when payable in produce or value of produce, and where the landlord does not give labour or other assistance, is not to exceed 50 per cent. of the gross produce in the case of crops declared by the Board of Revenue to be "staple," or 25 per cent. in the case of other crops, unless otherwise provided by express contract: he will be liable to enhancement only on those grounds which are at present grounds of enhancement (section 23), but the right of enhancement will be subject to several restrictions. If it is claimed on the ground of increase of produce or productive powers, or of prices of produce, and that increase is wholly owing to the landlord, the landlord may claim the whole of the increase; in other cases, he may claim half. In every such case, however, the increased rental (*a*) must not be more than twice the former rent; (*b*) must not bear a higher proportion to present produce or prices than the former rent bore to the produce or prices at the time when the rent was fixed, or at any subsequent date which the Court thinks equitable; and (*c*) it shall not be more than one-fourth of the annual average value of the gross produce.

The most striking feature of the Bill, however, is the provision in sections 128-143 for the preparation of a table of rent-rates,—which is to be in force for 10 years, and which will be, in fact, the "Pergunnah rate," which figures so prominently in the early literature of the Permanent Settlement,—and of an authorised table of prices, which will greatly facilitate all proceedings in enhancement and will make it possible (which it appears not to be at present) to form any approach to an estimate beforehand, whether the landlord is entitled to any enhancement, and, if so, to how much. On the feasibility of the scheme for ascertaining this pergunnah rate, the success of the Bill must mainly depend. If it can be thus ascertained, it will be a great boon; and we shall only the more regret that effectual means for its ascertainment were not adopted a hundred years ago.

In one important particular the Bengal Government goes less far than the Commission in provisions for the tenant's protection. It does not accept the Commission's recommendation that distraint should be altogether abolished. "Though it is quite certain that in Bengal Proper distraint is ever hardly made use of while in Behar it was worked only in an utterly illegal manner," the consternation of the land-owners at its proposed abolition was so great that it has been thought better to

Distraint.

retain the right, but to fence it round with restrictions which will preclude its improper or oppressive employment. It will be, throughout, a process of court, and, as such, will, it is believed, be a less easy instrument of oppression than a summary suit. The right as it stands in the Bill is confined to one year's rent (section 102); and, in the absence of a written contract or an order for enhancement, to the amount payable as rent in that year. A ryot may guard against it by depositing the rent claimed, or security for it in the Collector's Treasury, section 101—(a) co-owners can distrain only through a duly authorised agent (b) and the distraining landlord must have duly registered himself, (c) only the produce of the land, the rent of which is in arrear or held under the same lease, can be distrained, (103) and that only so long as it remains in the possession of the cultivator.

The person wishing to distrain will apply to the Court (104), which, if satisfied of the existence of the arrear, will make an order for distraint (apparently without examining the defaulting ryot). The ryot will then be served with a written demand for the arrear and costs of the distraint (108)—the ryot may, notwithstanding the distraint, gather and store the crop distrained; or, if he neglects to do so, the distrainer may, the crop in either case remaining in the custody of the distraining officer (110). The defaulter may, at any time before sale, raise the distraint by depositing the arrear and costs with the Court or officer (111); the sum so deposited he may, within a month, sue to recover (112), on showing that the arrear was not legally demandable. In default of such deposit the distraining officer will notify a sale, to be had not less than three, nor more than seven days after notification (113), and the property will be sold by auction (115). There is a provision (122) that a person whose property is wrongfully distrained may sue for damages, and that the wrongful distrainer may be deemed to have committed criminal trespass.

The crops of sub-ryots are liable to distraint on the part of the ryot's landlord for the ryot's arrear (123), unless the landlord have assented in writing to the sub-lease (125); but a sub-ryot, whose crops are thus distrained for the ryot's rent, may pay the amount and deduct it from his own rent to the ryot (123 and 124). The right of distraint may be suspended in any locality by an order of the Lieutenant-Governor (127).

Fenced round by these restrictions the right of distraint becomes little more than an attachment, prior to decree, of property, which would, if the decree is in favour of the plaintiff, be saleable in execution. It differs materially from the present law under which the initial step is taken by the landlord on his own authority [Act VIII of 1869 (B), section 71], without any order of Court, and under the Bill the unfairness of allowing the landlord by main force to lay hands on the crop at the outset of a dispute about rent would be avoided.

The chief complaint against distraint has hitherto been that landlords seize the crop and refuse to allow it to be touched till their demands are complied with. This is totally illegal under the existing law [Act VIII of 1869 (B), section 74, and Act X of 1859, section 118], and the attention of the authorities having been drawn to the subject, is not likely to recur.

On the whole, it is perhaps to be regretted that the recommendation of the Commission has not been accepted. Distraint is no part of the native law of landlord and tenant; it was imported for the first time by Regulation XVII of 1793, an enactment which extended it to the entire personal property of the defaulter, wherever found. Act X of 1859 restricted it to the produce of the land in respect of which the distraint is had, and exempted even this when stored. This last exemption the present Bill removes. On general grounds there is no apparent reason why in a conflict between two parties, one of whom is presumably the stronger, so special and cogent an instrument of coercion should be placed in the hands of the stronger. Modern opinion in England is, I believe, adverse to the policy of giving a landlord a superior position to that of any other creditor, and it is not apparent why the same rights of attachment previous to decree, which the Civil Procedure gives to all creditors, would not suffice in the case of landlords. The fact in any case remains that from some cause or other this power of distraint has been a source of general illegality and oppression; and, as a majority of the Behar Rent Committee and of the Behar Indigo Planters' Association concurred with the Rent Commission in advising its abolition, it seems a pity to preserve it. It ought, however, to be remembered that Mr. Edgar considers its retention desirable, on the ground that its abolition would result in a general refusal on the part of the ryots to pay rent; that the indigo planters would scarcely be affected by this, and would thus be left "masters of the situation."

I am not aware whether any material modifications have been made in the Bill, at a later stage than that which I have sketched above; but, assuming that it remains substantially unaltered, the following observations may, I think, be made upon it.

We must, on the whole, accept the conclusions of fact at which Sir A. Eden and a large body of able, experienced, and cautious officials arrived as to the ill results of Act X of 1859 on the position of the tenants, of their seriously depressed condition, and of the imperative necessity of some substantial amendment of the law in the direction of increased protection to the cultivating class. The Famine Commission got a great deal of evidence on the subject; it was the topic of prolonged and anxious consideration, and the conclusion at which we arrived was in the main, identical with that of all these other authorities. There are no statistics showing in Bengal what the relative numbers of the two classes of tenants are; but it seems to be admitted that in Behar, at any rate, the great mass of the tenants had originally occupancy rights, and that these rights have to a large extent been destroyed or are on the high road to destruction. The same process is, there is reason to suppose, more or less actively at work in other parts of the Province. As trade developes and the market

value of each acre is better known, the process will inevitably become more acute. What we have, accordingly, to deal with is, on the one hand, an enormous peasent class, numbering many millions, the great majority of them in a position but a shade removed from poverty, becoming year by year more exposed to all the evils incidental to a competition rental—the old safeguards, which the ancient law of the country and the English Legislature designed for their protection, being more and more lost sight of,—their numbers rapidly increasing,—the competition necessarily becoming more severe, the few fresh avenues for employment utterly inadequate to relieve the increasing pressure,—on the other hand, a small body of revenue-payers, and their assignees whose tendency not unnaturally is to regard themselves more and more as proprietors pure and simple, and like every other proprietary class to make the most of their property. The British Government has to find a *modus vivendi* between these conflicting interests. There is of course a *primâ facie* argument in favour of leaving things as they have been for 23 years, or at any rate departing from the lines laid down by Act X of 1859 as little as possible. But then the evidence seems to show that this measure has been felt all along by those who knew about it to be working extremely ill, and in fact to have produced, from the unskilfulness and want of consideration with which is was framed, a very marked deterioration in the condition of the peasantry. One leading principle of the Bill, viz. the 12 years' rule as a mode of obtaining occupancy rights, seems to me essentially vicious.

There is this great disadvantage attendant on any plan by which a tenant's privileges accrue by lapse of time, viz. that it effectually prevents the growth of that kindly spirit between landlord and tenant, which is so important a safeguard against the hardship and oppression which the system is otherwise calculated to produce. The natural course of things would seem to be that landlord and tenant should, as years went on, get accustomed to one another and to trust and like one another, and that the landlord, having got a good tenant, should be content to let him go on a rental with which he would not be satisfied in the case of a stranger. This, I have been told, is virtually the tenure of many of the best farms in England; there is no written or even oral contract not to enhance, yet the tenant goes year after year spending large sums on improvements, and is quite content to do so in confidence that his landlord will not disturb him. But this happy state of things becomes impossible where the Legislature enacts that at the end of a stated period the tenant shall change his status, and the landlord lose a considerable portion of his rights. The two parties are throughout necessarily at arm's length, and as soon as the period approaches the landlord naturally does something to prevent the accrual of the prescriptive right, and is always on the look-out to prevent the growth of occupancy rights, and to destroy them where they have accrued * I remember that the evidence laid before the Famine Commission pointed strongly in this direction, and in that of the hostile relations which existed between the two classes; as an instance it was said that the landlords sometimes welcomed famine as affording an opportunity of dealing summarily with inconvenient rights, accruing or accrued; and that they would not welcome any relief in the shape of concessions of revenue if attended by a corresponding relaxation of rent, because it would rob them of an useful weapon in dealing with tenants. In Behar the landlord's zeal to destroy evidence of occupany rights or prevent their accrual has led to an oppressive practice of moving the tenants about, so that they may never be for long in continuous occupation of the same plot. As both classes become more fully alive to their privileges, and the distinction between occupancy and non-occupancy tenants become more pronounced, no doubt measures will be generally taken towards this end. In a word, you can never have peace between two parties, one of whom will at a certain known period become entitled to privileges at the expense of the other

I do not see how this can be helped, and it makes me regard the 12-year rule as a very unfortunate contrivance for benefiting the tenant, and wish to see substituted for it any rule which would give the tenant the necessary privileges by some retrospective and immediate measure, rather than by the lapse of a future period. I would rather, if it be possible, say at once, and once for all, that all tenants with certain qualifications of residence, &c., are to be deemed to have occupancy rights than leave those rights to accrue by a precarious growth through a series of years, during which at any moment the landlord can stop the accrual, and during which, consequently, the two parties will be regarding each other with suspicion and hostility. We are driven, then, to seek for some other rule which may serve better as a protection to the great body of the tenants. Now, without going back to the older discussions as to the meaning of khudkast and pykast, it is, I think, pretty certain that the "resident" ryot was the person whom the Regulations were intended to protect, and that this was the normal condition of the peasantry. The general habit of an agricultural population must always be to remain *in situ*, and the non-resident tenant was probably a person who by some accident had broken loose from his village and zemindar, and whom other zemindars (in a time when cultivators were few and land abundant) were anxious to secure. The privileges and protection of the Regulations were intended for the great bulk of the population, not for a particular class; and the right to sit at certain fixed rents was the

---

NOTE.—This process is no doubt at work in every part of the country. The lamentable apathy of the Madras Government and Board of Revenue allowed it free course for many years on the zemindari estates, where in spite of the local officials the tenant's rights have been imperilled and invaded. In the Central Provinces, the Chief Justice observes, that he has "ascertained from the very highest authority that in the more recently cultivated districts it has become almost a system for landlords to turn out their ryots after a certain period of their occupancy, for the very purpose of preventing them from acquiring a permanent interest in their tenures."

Minute by the Chief Justice of Bengal, 8th January 1880. Rent Commission Report, Vol. 2, p. 380.

general privilege of all residents, not the prescriptive right of a favoured few. What I understand the legislature to have said then, and to meditate saying now, is something of this sort—"we will not leave the cultivator of the soil, defenceless as he is, to fight his battles with you on the ordinary ground of contract—in such a struggle he is certain to suffer,—the competition for land with an exclusively agricultural population will expose him to oppression and hardship: against this we gaurd by reserving to ourselves, as the protectors of the weakest class, the right to prescribe exactly what rents are to be paid, and to see that nothing but the rent is demanded."

This is what the Government has all along been saying, but the intention was frustrated by the impossibility of discovering the pergunnah rate and the general opposition which the zemindars offered to any curtailments of the powers and rights of which rightly or wrongly (and the language of the Regulations show to how large an extent it was "wrongly") they considered themselves in possession. The pergunnah rate will now, it is hoped, be definitely ascertained and declared, and the prices on which it must depend. Then how are we to define the people to benefit by it? Surely by returning to the old principle and conferring the privilege, as far as may be, on the entire body of the resident tenantry.

I do not know enough of village matters to judge whether the residence for three years in a mehal or within two miles of the village, is the best definition of the "residence" required by the Act. Possibly the definition may be improved at a later stage. But, meanwhile, the general principle of surrounding the normal resident ryot with occupancy rights seems to me sound and politic in itself, amply justified by the history of the case, and the best solution, in the interests of all concerned, of a problem which must be solved if the great mass of the inhabitants of Bengal are to be saved from the miseries of unrestricted competition.

How the measure can be cartied out with least disturbance of existing relations and least hardship to individuals and classes, is a question which the Goverment of India will hereafter have to settle in detail. The most satisfactory solution is that to which I have referred (p. 6), viz. the purchase of the landlord's rights by the tenants, and this is one of the plans which the Famine Commission specially recommended. But then this will not help the impoverished tenant, who cannot pay his way as he is, far less buy out his landlord. On the other hand, there ought, it would seem, to be some provision for excluding those tenants who are clearly non-occupancy, and who could be vested with occupancy rights only by setting aside their own distinct voluntary contract on the subject. The Bill does not appear to me to meet cases of this description at all adequately.

The measure, however, is not wholly one-sided: the landlord is protected by the provision that a holding cannot be transferred or bequeathed to a non-occupancy tenant without his consent. Nor, without like consent, can a portion of a holding be transferred; the landlord will also benefit by the presumption that existing rates are "fair and equitable" until the contrary is proved. Moreover, the existence of the Pergunnah Rate and the possibility of getting his rent by a simple suit will meet one of the landlord's standing grievances.

The Bill, as at present drafted, stands greatly in need of the sort of correction, which it will no doubt undergo in the Legislative Department when once the general principles are decided. Much of the language is adopted from the old Regulations, and is clumsy, obscure, or inaccurate. At the very outset, for instance, the definition of "ryot" needs to be amended, so as to confine the term more strictly to the actual occupants of the soil.* "Rent," moreover, is so defined as to include "revenue." Nor is the arrangement very happy. These, however, are details which will have to be discused in Committee. The great underlying principle of the Bill I understand to be that the Government will not leave those many millions of humble peasants at the mercy of the landlord class, to take their chance in a competition for land, every year becoming more acute; but will prescribe the rates at which the tenants are to sit and ascertain the prices current, on which these rates must be based, and will take effectual means to see that these rates, and these alone, are paid. This has been, over and over again, solemnly announced as the policy and duty of the Government, and if by mistake or otherwise our legislative and administrative action has hitherto fallen short of this result, I rejoice to think that the present Bill bids fair to be more effectual. It is perhaps rash to make any reference to Ireland. There is, however, an analogy between the two cases which cannot be overlooked. Whatever else the history of the Irish Rent question proves, it seems to indicate pretty clearly that if with a purely agricultural population the relations of landlord and tenant are left unchecked by external authority, and the economic law of competition is allowed free play, you will gradually get a rural population so depressed, so feeble in resource, so defenceless against vicissitudes of climate or crop, and so embittered against the rent-receiving class, whom they regard as immediately responsible for their suffering, that it may tax all the resources of a wealthy and powerful Empire to deal with the emergencies which will from time to time arise. If any approach to this state of things came about in Bengal, what could we do? The framers of the Regulations laid down as one of the standing duties of the zemindar "to keep the ryot content" (razee), and it is because the present Bill seems framed with the same beneficent and statesmanlike idea, that I should wish to give it my general support.

H. S. CUNNINGHAM.

* The present definition would include persons who, or whose predecessors in title, were originally let into possession of land for the purpose of cultivation by sub-tenants,—a description which would apply to all purchasers of agricultural land.

No. 1536, dated Fort William, the 13th December 1883.

From—D. FITZPATRICK, Esq., Secy. to the Govt. of India, Legislative Dept.,
To—The Secretary to the Government of Bengal, Revenue Department.

I FORWARD herewith a letter* from the Secretary to the Central Committee of the landholders of Bengal and Behar, No. 119, dated the 3rd instant, together with the memorial of that Committee, therein mentioned, addressed to Her Majesty's Secretary of State for India, relative to the Bengal Tenancy Bill.

Return requested.

2. You will observe from the 3rd and 5th of the rules relating to such memorials, published in the *Gazette of India* of 30th March 1876, Part I, that this memorial ought to have been submitted, in the first instance, to the Government of Bengal, but to save time, I am directed to transmit it to you, and to request that His Honor the Lieutenant-Governor of Bengal may be moved to favour the Government of India in this department, as early as practicable, with any remarks he may wish to make.

TO THE RIGHT HON'BLE THE EARL OF KIMBERLY, SECRETARY OF STATE FOR INDIA.

The humble petition of the Central Committee of the zemindars and other landholders of the Province of Bengal and Behar.

RESPECTFULLY SHEWETH,—

1. That your petitioners are zemindars and other landowners in the Province of Bengal and Behar, and they desire most respectfully to make to your Lordship certain representations with regard to the Bengal Land Tenancy Bill, which is now under the consideration of the Legislative Council of His Excellency the Viceroy and Governor-General of India.

2 From the papers attached to the Bill it appears that the Government of India in their despatch No. 6 of the 21st March 1882, solicited your Lordship's sanction to the introduction of the Bill, and your Lordship's sanction in a modified form was accorded to the proposal in your Lordship's despatch No. 54 of the 17th August 1882.

3. From the cautious moderation which characterizes that despatch, your petitioners feel that they may safely assume that your Lordship had no intention to sanction a revolutionary measure, which would make a *tabula rasa* of the vested rights of property in Bengal; and that your Lordship consented to the introduction of the Bill on the distinct understanding that it was justified by political necessity, and that its provisions were intended to restore the customary law of the country, which had existed before the Permanent Settlement of 1793, and had never been abrogated by the Legislature. These were the gounds distinctly put forward by the Government of India, and upon which, as your petitioners understand, your Lordship's sanction was accorded. It is a source of great satisfaction to your petitioners to observe that certain of the proposals of the Government of India were expressly disallowed, on the ground that they "made a great and novel departure from both the ancient custom and the existing law of Bengal"*

4. Your petitioners are deeply grateful to your Lordship for this interposition of your authority, because they always feel that a Government, constituted as the Government of India is, of officials who do not own an acre of land in the country, are liable, when dealing with the rights of landed property, to be swayed by theoretic opinions, and to treat with little consideration or respect vested rights and interests, if those rights and interests in any way conflict with their preconceived notions of the public good But your petitioners feel sure that your Lordship will not countenance a measure which effects a complete redistribution of property, which takes rights from one class and gives them to another, on the ground of an assumed expediency, because, apart from its obvious injustice, any organic change in the constitution of a large agricultural community, consisting of many millions of people, must produce convulsion instead of peace.

5. Another circumstance which renders it peculiarly necessary, if your petitioners may respectfully say so, that your Lordship should hold the scales of justice evenly between the Government and the zemindars, is the admitted fact that there exists among the officials of India a peasant-proprietary school, who have always regarded the Permanent Settlement as a mistake, and have at times even urged the Government to cancel it. Of this school, Mr. Bird, the author of the Settlement of the North-Western Provinces, was a leading disciple. The despatch of the Government of India to your Lordship speaks of the great influence which this school has exercised on official opinion. "Before the mutiny," to quote the words of the despatch,—"ideas on the subject of property and tenant-right in India took very much of their colour from the views of the able peasant-proprietary school of the North-Western Provinces."† It is a matter of history how lamentably Mr. Bird's settlement collapsed in the days of the mutiny; while the zemindars of Bengal ranged themselves on the side of loyalty and order. But the experience of those years is either forgotten or ignored, and the views of the "peasant-proprietary school" are again dominant in the counsels of the Government of India. But your petitioners feel sure that your Lordship in dealing with the rights of property in Bengal will base your decision, not upon

* Para. 7 of the Secretary of State's despatch.
† Paragraph. 7.

"ideas or opinions coloured by the views of any particular school," but upon facts properly ascertained and determined, and upon principles of justice and fairness to every class and interest in the country.

6. It is the complaint of your petitioners that those facts have not been correctly stated in the despatch of the Government of India, upon which your Lordship's sanction to the present measure was solicited. Had those facts been correctly stated, your petitioners feel sure that your Lordship would have rejected the whole measure as being "a great and novel departure from both the ancient custom and existing law of Bengal." But instead of referring your Lordship to the original documents which formed the basis of the Permanent Settlement, the Government of India write in their despatch. "We shall content ourselves here with citing evidence showing what the authors of the Permanent Settlement intended to provide: what, as a matter of fact, was provided in the Regulations of the Permanent Settlement; and in what sense those Regulations were understood by the Government and by some of its best-informed officials before the documents, which explain the proceedings of 1793, *faded to a great extent out of general recollection.*"* To the novel method of interpreting documents your petitioners very naturally object. The documents at any rate have not faded out of recollection; they are still extant and speak for themselves. To attempt to control the plain meaning of documents, about which there is no ambiguity, by the opinions and ideas, to use the words of the Government of India, "of the able peasant-proprietary school of officials," is a course which your Lordship is not likely to adopt. Such opinions would be absolutely inadmissible as evidence in a Court of Justice. Not one man in a thousand of your petitioners has ever heard of these opinions; or has had any opportunity of refuting them. All that your petitioners know and recognize are the promulgated Regulations, under which they stipulated to pay their revenue, and which embodied the results of the long enquiry into the customary land law of the country.

7. Your petitioners would next call attention to another passage in the despatch with reference to their own position and the position of the ryots at the Permanent Settlement. It is as follows:—"Under the Mogul Government the land tax was collected by farmers or contractor or Rajas, sometimes mere nominees of the Ruler of the day, sometimes possessing pre-existent rights of various kinds. The British Government converted this intermediate class into the zemindars of the Permanent Settlement, and changed the land tax of the Mogul into the rents of the zemindars' estates. But the zemindars, though termed "actual proprietors" of the land, were not absolute proprietors against the ryots. The latter possessed substantial rights, which at the time of the Permanent Settlement, though not then ascertained and defined, were saved in express terms, and the Government of 1793 reserved to itself the power to ascertain and settle those rights at any future time when it might deem it expedient so to do." Your Lordship has necessarily accepted this statement as correct, considering the source from which it came, but as a matter of fact there is not a word in the above extract which cannot be disproved by the most conclusive evidence.

8. The zemindars were not created by Lord Cornwallis: they held their lands and estates, not only before the Permanent Settlement, but before the Mahomedan conquest of Bengal by the Emperor Akbar. This is not a matter of opinion, but of fact. Even at the present time the oldest families of the country can trace their origin and their possessions to times anterior to the Mogul rule. The Mahomedan conquerors of Bengal never attempted to dispossess the Hindoo proprietors of their lands. It was Akbar's policy to conciliate the Hindoo proprietors and reconcile them to his rule; and the land tax which he imposed upon the country about the year 1573 was not only moderate in its amount, but practically permanent in its operation. It remained unchanged for a period of 140 years.† During the whole of this long period the zemindars lived in peace and affluence; and neither in act or in word were their rights of property questioned by their Mahomedan conquerors. "It was an established principle," writes Mr. Harrington, "of Mogul finance, as practised in Hindoostan, that the rents belong to the sovereign and the land to the zemindar."‡ The Emperors of Delhi would certainly not have purchased land from the zemindars, as it is known they did, if the property in the soil had not been vested in the land-owners.§ And yet the Government of India assure your Lordship in their despatch that the zemindars were mere contractors or collectors of revenue, converted into proprietors by Lord Cornwallis.

9. It was not until the days of anarchy which preceded the final dissolution of the Mogul empire that the rights of the zemindars were either invaded or assailed In those times of rapine and confusion every man of property in the country was either murdered or plundered by the ferocious usurpers, who for a brief period successively seized the Mahomedan Government. Mr. Francis, in a minute written as a Member of Council in 1776, has described the administration of Cossim Ali, who despoiled—it would be a misnomer to say governed—Bengal in 1763. "His principle is said to have been that whatever the ryots paid should be the property of Government, thereby totally excluding the zemindars. His officers acted accordingly. Their

* Paragraph 40.
† Appendix No. 1 to Mr. Shore's minute of September 18, 1789.
‡ 3 Harrington Analysis, 245, 300.
§ 3 Id. 348.

fear of him was so great, both from his skill in accounts and the vigour of his Government, that his orders were punctually obeyed; so that, partly from the direct produce of the lands and partly by fines and confiscations, it is believed that for two years he drew almost double the ancient revenue from the country. His short administration may rather be deemed a regular pillage than a system of Government. He ruined almost all the wealthy families in the country, massacred great numbers, particularly such as had any talent or reputation in business; and to conclude the scene, carried off an immense treasure with him when driven out of the country."*

10. It was perhaps not unnatural that the East India Company, when they acquired possession of Bengal in 1765, after this period of anarchy and confusion, should have at times ignored the constitution of the country, and have accepted the practices of usurpers and robbers as precedents for their own administration. Warren Hastings, who was appointed Governor-General in 1772, put up to public auction the whole of the landed property of Bengal. If the proprietor was willing to pay as much as other people, he kept his estate; if not, it was made over to the highest bidder, and the zemindar received a subsistence allowance for his support. For this measure he was afterwards impeached. The charge was adopted by the House of Commons in 1786, and it may be interesting to your Lordship to see the view that was then entertained by the House of Commons of the position and rights of the zemindars.

11. The charge† sets out that "the property of the lands of Bengal was, according to the laws and customs of that country, an inheritable property, and that it was with few exceptions, vested in certain natives, called zemindars or landholders, under whom other natives, called taluqdars and ryots, held certain subordinate rights of property or occupancy in the said lands; that the said natives were Hindus, and that their rights and privileges were grounded upon the possession of regular grants, a long series of family succession and fair purchase; that it appeared that Bengal had been under the dominion of the Mogul, and subject to a Mahomedan Government, for above two hundred years; that, while the Mogul Government was in its vigour, the *property of zemindars was held sacred*; and that either by voluntary grant from the said Mogul or by composition with him, the native Hindus were left in the free, quiet and undisturbed possession of their lands, on the single condition of paying a fixed certain and unalterable revenue or quit-rent to the Mogul Government; that this revenue or quit-rent was called the *aussil jumma* or original ground-rent of the provinces, and was not increased from the time it was first settled in 1573 to 1740, when the regular and effective Mogul Government ended. That notwithstanding that the right of property and inheritance had been repeatedly acknowledged by the said Warren Hastings to be in the zemindars and other native landholders; and notwithstanding that he had declared that the security of private property was the greatest encouragement to industry, on which the wealth of every State depended, the said Warren Hastings nevertheless, in direct violation of those acknowledged rights and principles, did universally let the lands of Bengal in farm for five years, thereby destroying all the rights of private property of the zemindars, thereby delivering the management of their estates to farmers, and transferring by a most arbitrary and unjust act of power the whole landed property of Bengal from the owners to strangers."

12. As far as your petitioners are aware, Warren Hastings never attempted to justify his conduct on the ground that the zemindars had no right of property in their lands. Before he left India an Act of Parliament,‡ had been passed directing the restoration of the zemindars to their estates; and in the review of his administration which he wrote on his voyage home he thus speaks of this Act of Parliament:—"I shall only further observe, on the proposed plan of restoring the zemindars to the possession of their lands and the management of their revenues, that unless care should be taken at the same time to establish some mode of guardianship, with a view to remedy the defects of minority, profusion and incapacity of the zemindars, their restoration, which carries with it the *appearance of justice*, will often terminate in acts of the greatest severity in the total dispossession of the zemindars, or in concessions on the part of Government to their demands for the revenues."§ The justice of the measures he admitted, but he apparently defended himself on the somewhat extraordinary plea that he was acting for the best interests of the zemindars themselves

13. If the short period of usurpation and anarchy which preceded the dissolution of the Mogul monarchy and the first few years of the East India Company's administration are excepted, the property of the zemindars—to use the words of the House of Commons—has always been held sacred; and if their right of property is now to be denied, precedents must be sought for in the atrocious cruelties of Mahomedan usurpers, and the acts of an English Governor which the British Parliament condemned and reversed.

14. But the Act of 1781 not only directed the restoration of the zemindars to their estates, but was the immediate and proximate cause of the Permanent Settlement. In forwarding the Act to their Government in Bengal, the Court of Directors expressed their opinion "that the spirit of the Act would be best observed by fixing a permanent revenue on a review of the assessment and actual collections of former years; and by forming a settlement in every practicable instance with the landholders; establishing at the same

* Francis Land Revenues of Bengal, p. 39.
† Burke's Works, vol. 7, p. 109.
‡ 21 George III, c 25, s. 39.
§ Warren Hastings' Memoirs, p. 121.

time such rules as might be requisite for maintaining the *rights of all descriptions of persons under the established usages of the country.*"* These orders of the Court of Directors were carried out with the most scrupulous care; and Mr. Shore (afterwards Lord Teignmouth) in a series of most exhaustive minutes, gave a detailed account of the respective rights which the agricultural classes, from the zemindar to the ryot, were found to possess. Mr. Shore's conclusions were adopted by Lord Cornwallis, the Court of Directors, and the Ministry in England, and were finally embodied in a series of legislative enactments which are generally known as the Permanent Settlement Regulations.

15. These Permanent Settlement Regulations of Lord Cornwallis are to India what Magna Charta is to England. It is to them that the zemindars and ryots alike look for the security of their liberties and rights. In the very first Regulation the status of the zemindars is declared: and to an ordinary understanding there is not much ambiguity about the words: "The Governor-General in Council," so runs the Regulation, "declares to the zemindars, independent talukdars, and *other actual proprietors of land*, that no alteration will be made in the assessment which they have respectively engaged to pay, but that they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever. The Governor-General trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves *in the cultivation of their lands*, under the certainty that they will enjoy exclusively the fruit of their own good management and industry. To discharge the revenues at the stipulated periods without delay or evasion, and to conduct themselves with good faith and moderation towards their dependent tulukdars and ryots, are duties at all times indispensibly required from the proprietors of land, and a strict observance of these duties is more than ever incumbent upon them for the benefits which they will themselves derive from the orders now issued."†

16. To understand the force and effect of this public recognition of the zemindars as proprietors, it must be remembered that there were officials in the time of Lord Cornwallis, as there were in the time of Warren Hastings, who in their zeal to replenish the exhausted coffers of the State were not ashamed to adopt the principles of the very worst of the Mahomedan usurpers, and to urge the Govenrment to confiscate by an arbitrary act of power the property of the zemindars. The chief advocate of this confiscatory school was Mr. Grant, the Sheristadar of the Board of Revenue, who maintained that the zemindars were mere collectors of revenue, and that the Government had a perfect right to dispense with their services and appropriate their estates.* The Government of Lord Cornwallis and the Court of Directors refused to entertain so monstrous a proposal. Your petitioners will quote a short extract from the Court's despatch:‡ "We have perused with attention Mr. Grant's discussion of the rights of zemindars, but we should have thought our Supreme Government very blameworthy if upon his suggestion, or upon being ever so much urged to adopt that line of conduct by the Committee of Revenue, they had ventured to issue any public declaration which would have abrogated the claims the zemindars have been supposed to enjoy to an hereditary possession, and thereby precipitately committed the national faith and honor upon a subject of so much magnitude. Neither can we observe without astonishment the levity with which this most important consideration has been treated by the Committee. *We believe it is a fact that many of the present zemindars are the lineal descendants of those persons who possessed the lands before and under the conquest of Bengal by Akbar, about two centuries ago.* In like manner it is certain that the idea of an hereditary tenure has been sanctioned by repeated discussions in the British Parliament. It has been recognized also by the undeviating practice of our Governments in Bengal, and of all the Dewanny Courts since our possession of the country, and that not as mere acts of grace, but as the dues of justice. With all this evidence of fact before us, in favour of the zemindars, we should not hold ourselves warranted in so monstrous an exertion of the powers vested in us by the Legislature, as that of nullifying upon a *mere theoretic opinion* all the supposed property of an extensive territory."

17. The declaration of Lord Cornwallis that the zemindars were proprietors was intended to set at rest the controversy for ever. It was a distinct acknowledgment and recognition of the status which the zemindars always had, but which the British Government had never before formally declared. And to remove any ambiguity about the meaning of the word proprietor it was declared in the second Regulation that "the *property in the soil* was vested in the landholders.§ Your petitioners are at a loss to understand how the Government of India could in the face of these facts assure your Lordship that the *zemindars were mere contractors or collectors of revenue, converted into quasi-proprietors by the Permanent Settlement Regulations.*

18. Equally inaccurate is the next statement of the Government of India, that the rights of the ryots were not ascertained and defined at the time of the Permanent Settlement, but were in some mysterious way left outstanding, and that the Government reserved to itself the right to ascertain and settle them at some future time. Your petitioners are in a position to show conclusively, as a matter of fact, and not as a matter of opinion, that the rights of the ryots were ascertained and settled by the Permanent

* 2 Harrington's Analysis, p. 174.
† Reg. 1, 1793, s. 4-7.
‡ Letter of Court of Directors, August 21, 1788, quoted 3 Har. Analysis, 357 note.
§ Preamble of Reg. I, 1793.

Settlement Regulations, and that there is not even a pretext for saying that the legislature reserved to itself the right of ascertaining and settling them at a future time.

19. Your petitioners have already* referred to the Act of Parliament of 1784, and the instructions of the Court of Directors, directing their Government in Bengal to conclude a Permanent Settlement with the zemindars and to "establish at the same time such rules as might be requisite for maintaining *the rights of all descriptions of persons under the established usages of the country.*" Your petitioners will now quote the testimony of Mr. Harrington, who was a contemporary of the events of which he was speaking, and who thus describes the enquiries which were instituted by Lord Cornwallis. "On the receipt of these instructions the most particular inquiries were set on foot to obtain all possible information of the former and present state of the several districts; the condition of the landholders and *tenants of every description*; their rights under the Mogul Government before its decline; the *laws and usages which had since prevailed in settling the rents payable by the ryots and other under-tenants to the zemindars* and other superior landholders; what new impositions and exactions had been introduced under the Company's administration; *what rules were required for securing the inferior occupants and immediate cultivators against oppression and extortion;* and generally *what measures should be adopted to remedy existing defects and abuses in the adjustment and collection of the land rents.*"†

20. It seems extraordinary that with Mr. Harrington's testimony before them the Government of India could have stated to your Lordship that the rights of the ryots were not ascertained and defined before the Permanent Settlement. The Government of India had also before them the minute of Mr. Shore of the 18th of June 1789, which forms the basis of the Permanent Settlement Regulations. In that minute Mr. Shore thus writes:—

"I now advert to the third subject of enquiry, the rules for preventing oppressions upon the ryots by the zemindars and farmers. In determining this question the *rights* of the zemindars, talukdars and *ryots ought to be first ascertained*, and I shall here insert a summary of what I deem myself authorized to maintain upon these points, premising that I pretend only to state facts and draw such conclusions from them as they fairly admit, without reconciling any apparent inconsistency either in facts or forms.‡

"I consider the zemindars as the proprietors of the soil, to the property of which they succeed by right of inheritance, according to the laws of their own religion, and that the sovereign authority cannot justly exercise the power of depriving them of succession, nor of altering it, when there are any legal heirs. The privilege of disposing of the land by sale or mortgage is derived from this fundamental right, and was exercised by the zemindars before we acquired the Dewanny.§

"The revenues of the land belong to the ruling power, which being *absolute* claimed and exercised the right of determining the proportion to be taken by the State.‖

"With respect to the ryots, their rights appear very uncertain and indefinite. While the demands of Government upon the zemindars were regulated by some standard, as I conclude it was from the time of Akbar to that of Jaffer Khan, they had little temptation or necessity to oppress their ryots, but the same variable discretion which has affected the payments required from them has extended in the same manner to the ryots.¶ The rates of the land were probably fixed formerly according to the nature of the soil and its produce; the cesses imposed by the zemindars were an enhancement of those rates, and arbitrary at first without being oppressive.¶ It is, however, generally understood that the ryots by long occupancy acquire a right of possession to the soil, and are not subject to be removed; but this right does not *authorize them to sell or mortgage it, and it is so far distinct from a right of property.* This, like all other rights under a despotic Government, is precarious. The zemindars, when an increase has been forced upon them, have exercised the right of demanding it from the ryots. If we admit the property of the soil to be solely vested in the zemindars, we must exclude any acknowledgment of such rights in favour of the ryots, except where they may acquire it from the proprietor.**

"In every district throughout Bengal, where the license of exaction has not exceeded all rule, the rents of the land are regulated by known rates, and in some districts each village has its own. These rates are formed with respect to the produce of the land at so much per bigha;†† some lands produce two crops a year; some three; the more profitable articles, such as the mulberry plant, betel leaf, tobacco, and sugarcane, render the value of the land proportionably great.‡‡ These rates must have been fixed upon a measurement of the land, and the settlement of Turymul§§ may have furnished the basis of them. In the course of time cesses were superadded to that standard, and became included on a subsequent valuation, *the rates varying with each succeeding measurement.*‖‖

"When the rents by successive impositions become too heavy, the *ryots either abscond* or the zemindar allows them a compensation by giving them other lands at a favourable rate.¶¶ When a measurement of the land takes place, the existing rates are confirmed, and generally with some additions. When none can be found, a reference is made to the rates of other lands of the same quality in the vicinity of the spot measured; but the adjustment of them in that case is a business of considerable difficulty. Every part of the transaction is a subject of contention, the demands on both sides are unreasonable, and are finally terminated by a compromise***.

There are two other distinctions of importance††† with respect to the right of the ryots. Those who cultivate the lands of the village to which they belong, either from length of occupancy or other cause, have a stronger right than others, and may *in some measure* be considered as hereditary tenants, and they generally pay *the highest rents.* The other class cultivate lands belonging to a village, where they do not reside; they are considered as tenants-at-will; and having only a temporary accidental interest in the soil, which they cultivate, will not submit to the payment of so large a rent as the preceding class, and when oppressed easily abandon the land, to which they have no attachment.‡‡‡

"A ryot pays his rent either by a formal or implied agreement. The first is a deed called a pottah, which ought to express the nature and terms of his tenure and the amount of his rent; it often, however, refers some of the conditions to indefinite rules, such as the custom of the village or the pergunnah, the rates of an elapsed year, or the rent of his predecessor. The terms of an implied agreement are sometimes specific,

---

* Ante para. 14.
† 2 Harrington's Analysis, 174.
‡ Para. 369.
§ Para. 370.
‖ Para. 372.
¶ Para. 388.
** Para. 389.
†† About one-third of an acre.
‡‡ Para. 391.
§§ The Finance Minister of Akbar.
‖‖ Para. 392.
¶¶ Para. 397.
*** Para. 398.
††† Paras. 225, 230.
‡‡‡ Para. 225.

as in Chittagong, where the rents are paid from year to year, according to rates established upon a measurement of the lands in the year 1767, or indefinite, as having a reference to the rates of the last and preceding year, as in Nuddea. In some places, as in the northern parts of the Dacca districts, the collections are made by a measurement of the land held by each renter, immediately previous to the harvest, agreeable to which the lands are valued and the rents received.*

Leases to the khudkast ryots, or those who cultivate the land of the village where they reside, are generally given without any limitation of period, and express that they are to hold the lands paying the rents from year to year. Hence the right of occupancy originates: and it is equally understood as a prescriptive law that the ryots who hold by this tenure *cannot relinquish* any part of *the lands in their possession*, or change the species of cultivation without a forfeiture of the right of occupancy which is rarely insisted upon; and the zemindars demand and exact the difference. I understand also that this right of occupancy is admitted to extend even to the heirs of those who enjoy it.† Pykast ryots, of those who cultivate the land of villages, where they do not reside, hold their lands upon a more indefinite tenure. The leases to them are generally granted with a limitation in point of time, and when they deem the terms unfavourable, they repair to some other spot."‡

21. Mr. Shore's conclusions may be summed up as follows:—

I.—That the zemindars were the proprietors of the soil.

II.—That the Government, being an arbitrary Government, could fix the land tax or revenue at whatever rate it pleased.

III.—That the cultivators were of two descriptions—resident ryots and non-resident.

IV.—That non-resident ryots were mere tenants-at-will.

V.—That resident ryots from long residence acquired a right of occupancy, but this right of occupancy was distinct from a right of property, as they could neither sell nor mortgage the land.

VI.—That a resident ryot who relinquished any portion of his land, or who changed the species of cultivation, forfeited his right of occupancy.

VII.—That all ryots, whether resident or non-resident, held their lands under an express or implied agreement as to the rent that was to be paid, but that the zemindars imposed at their pleasure cesses upon their ryots over and above the amount stipulated for in the agreement.

VIII.—That the rates of rent depended upon the nature of the produce grown, and varied with each succeeding measurement, and in some places with each succeeding harvest.

It should further be added that the rents paid by the ryots were reckoned at a half to three-fifths of the gross produce,§ and the zemindar had the power of imprisoning and subjecting to corporal punishment any ryot who made default in the payment of his rent.

22. In the face of these facts, your petitioners would again ask what authority there is for the assertion made by the Government of India to your Lordship, that the rights of the ryots were "not ascertained and defined at the time of the Permanent Settlement?" Your Lordship will also find that these rights were not only ascertained, but that a Regulation was passed on November 23, 1791, by Lord Cornwallis for the security and protection of the ryots, in all the rights and privileges which they were found under the customary law of the country to possess. This regulation was afterwards re-enacted by Regulation VIII, 1793, and your petitioners will have frequent occasion to refer to it in the subsequent part of their memorial.

23. Your petitioners will now point out that the last assertion contained in the above extract—that "the Government of 1793 reserved to itself the power to ascertain and settle those rights at a future time—" is equally unsupportable. The only authority advanced for this assertion is an extract from a despatch written by the Court of Directors in 1819, and which is set out at paragraph 45 of the Government of India's despatch. The words of the Court of Directors are these:—"It is also a circumstance, which is not to be overlooked, that although so many years have elapsed since the conclusion of the Permanent Settlement, yet no resort has been had to the exercise of the power in them expressly reserved of interfering for the purpose of defining and adjusting the rights of the ryots." The question for your Lordship to determine is whether the intentions of the Government in 1793 are to be determined by the Permanent Settlement Regulations themselves, which were promulgated for the information of the public and under the faith of which the zemindars agreed to pay their revenue assessment, or by the opinion of the Court of Directors as to the meaning of those regulations, at a time when the Court of Directors, under the influence of the present-proprietary school, had begun to consider that the Permanent Settlement was a mistake. Your Lordship is as well able in 1883 to interpret the meaning of the Permanent Settlement Regulations as the Court of Directors in 1819. The Permanent Settlement regulations say nothing about ascertaining and settling the rights of the ryots at a future time. The words of the Regulation are as follows:—‖

"To prevent any misconstruction of the foregoing articles, the Governor-General in Council thinks it necessary to make the following declarations to the zemindars and other actual proprietors of land.

"It being the duty of the ruling power to protect all classes of people, and more particularly those who, from their situation, are most helpless, the Governor-General will, whenever he may deem proper, enact such Regulations as he may think necessary *for the*

* Paras. 327-330.
† Para. 406.
‡ Para. 407.
§ Shore's minute, December 8, 1789, para. 5
‖ Reg. I. 1793, s. 8.

protection and welfare of the dependent talukdars, ryots, and other cultivators of the soil and no zemindar, independent talukdar, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."

24. To legislate for the protection and welfare of the ryots is very different from saying that the Government reserved to itself the power of ascertaining and defining the rights of the ryots at a future time. Your petitioners in no way deny that the Government has full power to legislate for the protection and welfare of the ryots or of any other class of the community. Such power is necessarily inherent in all Governments. But legislation for the protection of one class does not mean that you are to confiscate the rights of property of another class. In the present case, it is admitted that the zemindars have enjoyed the rights and privileges, of which they are now to be deprived, since the Permanent Settlement in 1793,—and your petitioners have shown that the Permanent Settlement did not create, but simply affirmed those rights—and are they to be deprived of them now, on the ground that the Government is entitled to legislate for the protection and welfare of the ryots? Surely such legislation must follow and not depart from the lines of the Permanent Settlement. The new ordinances to be framed for the protection of the ryots must be of the same kind as the rules which the authors of the Permanent Settlement enacted for the same purpose. The object of those rules was to secure and protect the ryot from oppression. If those rules have not affected their purpose, they can be supplemented by others, of the same scope and with the same object in view. Legislative protection necessarily implies the existence of rights to be protected; you cannot protect rights which have no existence. No one can object to the Legislature securing and protecting the rights which the ryots already possess. The objection to the present Bill is that, under the plea of remedial legislation, new rights are created in favour of one class of the community at the expense of the acknowledged rights of another class of the community. There has been much legislation in England for the protection and welfare of children and others employed in mines and manufactories; but no one has ever heard of an Act, which under the plea of legislating for the protection and welfare of the employés, gave the employés a share in the mine or the manufactory itself. And yet this is precisely what the present Bill does.

25. Having shown how erroneous and misleading are the assumptions of the Government of India in their despatch, your petitioners will next point out to your Lordship how far the leading proposals of the Bill are in accordance with, or a departure from, the ancient land law which it is the professed object of the Bill to restore.

26. The great principle of the Bill is to convert all the ryots of Bengal into occupancy ryots, or as they are called in the Bill "settled ryots." At the time of the Permanent Settlement, the only occupancy ryots were the hereditary resident or khudkast ryots of the village. The non-resident ryot was a mere tenant-at-will. The Bill proposes to confer this occupancy right on resident and non-resident ryots unlike. Under the present law* a ryot, who has held and paid rent for a piece of land for 12 years, acquires a right of occupancy in it, provided the lease under which he holds does not contain a stipulation inconsistent with the accrual of such right. When this right was conferred in 1859 it was thought but reasonable and fair that the landlord should, if he wished, make it a condition of the lease that the right of occupancy should not accrue. The landlord might have particular reasons for wishing to get the land again into his possession at some future date. It was accordingly provided in 1859 that the accrual or non-accrual of the right of occupancy would depend upon the contract entered into between the landlord and the tenant. By a stroke of the pen, and without any compensation to the landlord, all these contracts are now to be swept away. The Bill declares that "every person who for a period of 12 years, whether before or after the commencement of the Act, has continuously held as a ryot ryoti land in any village or estate, shall, *notwithstanding any contract to the contrary*, and though the land held by him at different times may be different, be deemed to have become on the expiration of that period a settled ryot in that village or estate."

27. Your Lordship will observe the extraordinary nature of this provision. A tenant has held an acre of land in a village for 12 years: he then obtains a lease of another five acres, and because he is a settled tenant with regard to one acre, he at once, *notwithstanding any contract to the contrary*, obtains occupancy rights in the other five. The only result of such a provision will be, that it will prevent a settled ryot getting extra land, should the landlord wish to make any special arrangements about it. In such a case the landlord will naturally give the preference to a non-occupancy ryot. The provision, moreover, practically nullifies the 12 years' rule, which your Lordship in your despatch distinctly said should not be departed from.† It gives a personal right to the ryot quite apart from the land—a thing unheared of both in the ancient and existing law. Such violent innovations only defeat their own ends.

28. It is further declared that a settled ryot shall have a permanent right of occupancy in the land at a fair and equitable rent, the existing rent to be deemed to be fair and equitable, unless the landlord can prove the contrary. The right of occupancy further carries with it a right to sell or sub-let the land without the permission of the landlord. The effect of the proposed change in the law will be to defeat all existing contracts, and to give to every ryot a right of occupancy at the rent which he is paying at the

* Act X, 1859, s. 5, 6-7.
† Secretary of State's despatch, paras. 8, 9.

present time, and which the law is to presume to be a fair and equitable rent: But this is not all. Though the rent may for various reasons be an inadequate rent, the landlord is prohibited from raising it. Even if the tenant is willing to pay a higher rent, the landlord cannot accept it. All contracts between a landlord and a settled tenant for the payment of an increased rent are declared void! Under no circumstances can a landlord and a settled tenant enter into an agreement by which the rent of the land is raised. If a landlord wishes to enhance his rent, he must either bring a suit against his tenant in the Civil Court—a must ruinous proceeding to both parties—or he must go before a Revenue Officer of Government and obtain his approval of the agreement. The most ordinary dealings between man and man are absolutely prohibited, and the Civil Court or the Revenue Officers of Government are to be appealed to in all the daily transactions of agricultural life.

29. Can it be pretended that these provisions are in accordance with the ancient land law of the country? What does Mr. Shore say? "The regulation of the rents of the ryots is properly a transaction *between the zemindar and his tenant and not of the Government.*"* The great object of the Permanent Settlement was to encourage landlords and tenants to enter into written contracts with each other. The landlord was required to give leases to all his tenants,† and there is not a Regulation or Act in the Statute Book in which the Government has ever claimed the right of interfering between a landlord and his tenant; on the contrary, it has always disavowed such right.‡

30. But it is said that in prohibiting the freedom of contract and preventing landlords from obtaining any increase in their rents, the Government are merely restoring the ancient land-law of the country. It is asserted that under this ancient land-law occupancy ryots were entitled to hold their lands at the pergunnah or established rates, and that these rates were fixed by the ruling power. For the latter part of this assumption there is absolutely no foundation whatever. The ruling power in Bengal has never fixed or attempted to fix the rents of the ryots. Whatever rates of rent have been fixed in particular villages or particular pergunnahs have always been fixed by the zemindars themselves; and these rates, when so fixed, were the rates which the occupancy ryots were required to pay.

31. Mr. Shore devoted particular attention to this subject, and he could find no instance, until the time of Jaffir Khan, of the Mahomedan Viceroys interfering in any way with the property of the zemindars. Of Jaffir Khan he thus writes:—"The severities inflicted upon the zemindars *to compel them to a discovery of their resources* were disgraceful to humanity: and as if personal indignities and tortures were not sufficient, the grossest insults were offered to the religion of the people. Pits filled with all impurities were used as prisons for the zemindars, and these were dignified with the appellation of Bykont, the Hindu paradise.....Such were the acts of an administration which, in the language of Mr. Grant, opened a new and illustrious era of finance."§ Mr. Shore could find no instance of any interference with the rights of the zemindars before "this new and illustrious era of finance" inaugurated by the tyrants who plundered Bengal at the close of the Mogul dynasty. It was then that Government officers, called aumils, were sent to ascertain the profits derived by the zemindars from their estates, and to dispossess them altogether if they refused to comply with extortionate demands. In a subsequent part of the same Minute.‖ Mr. Shore refers particularly to these acts of Jaffir Khan as furnishing a precedent of Government interference with the zemindars. "The Government," writes Mr. Shore, "sometimes interfered in regulating the rents paid by the ryots, and in some cases employed its own officers to collect them. Jaffir Khan's conduct offers a precedent of an interference to the exclusion of the zemindars, and the institutes of Akbar show that the relative proportions of the produce were settled between the cultivator and the Government, yet *in Bengal I can find no instance of Government regulating these proportions.*"

32. The reason is obvious. In other Provinces of the Mogul Empire where, as in Madras, there were no zemindars, the State professedly settled the proportion of the produce, which the cultivators had to pay; but in Bengal it was the zemindars and not the cultivators who were assessed. But even where the Government professedly dealt with the ryots, it was found impossible in practice to assess each individual cultivator. It was one of the schemes of Akbar to have a general survey made of his empire, but Colonel Briggs states that "at a very early period the scheme of Akbar to assess fields was discovered in practice to be full of embarrassment; and before his measurements even were completed, he was reduced to the necessity of assessing whole villages, and leaving it to the people themselves to distribute the portion payable by individuals."¶

33. Mr. Shore, after stating that he could find no instance in Bengal of Government fixing the rent of the ryots, observes in a subsequent part of the same minute that "the regulation of the rents of the ryots is properly a transaction between the zemindar or landlord and his tenants, and not of the Government; and the detail attending it is so minute as to baffle the skill of any man not well versed in it."** Your petitioners unhesitatingly assert that there never was a time when the zemindar could not make what terms he pleased with his ryots, and that the pergunnah rates, or the established rates, were the rates which the zemindar himself established. How could it be otherwise? If he did not establish them, who did? The Government did not, for Mr. Shore writes that there is no instance†† of

---

* Minute of September 18, 1789, para. 433.
† Reg. VIII, 1793, s. 58, 59.
Preamble of Reg. II, 1793.
§ Shore's Minute of June 18, 1789, para. 16.
‖ Para. 378.
¶ Brigg's Land Tax., 126.
** Para 433.
†† Shore's Minute, para. 378.

Government interfering to regulate these rates in Bengal. What were the cesses which the zemindars before the Permanent Settlement were accustomed to levy but an increase of the rates? "The cesses," says Mr. Shore, "imposed by the zemindar were an enhancement of these rates, and arbitrary at first, without being oppressive."* For what object were the lands of the ryots periodically† measured; for what object were enquires made as to the quality of the land and the crops it produced, except to obtain an increase of rent? "The rates,' said Mr. Shore, "varied with each succeeding measurement; and when they become too heavy, the ryots *abscond* or the zemindar allows them a compensation by giving them other lands at a favourable rate."‡ In the face of these facts how can it be contended that the zemindar did not fix the rates? The lands were not measured by a Government officer, but by the zemindar's own servants. There was no one but the zemindar who could have fixed the rates. A special officer, called the "halshanah," whose special duty it was to measure, was attached to every zemindar's establishment.§ General measurements were made every ten or fifteen years,‖ and the general rates as determined by the measurement would remain in force till the next measurement. These rates would then be the established rates of the village pergunnah, or other division until revised by a subsequent settlement. But as the rent was fixed, with reference to the quality of the land and the nature of the crops grown upon it, there was a great diversity of rates even in a single village This, again, shows that the rates could not have been fixed by the ruling power, but must have been a matter of adjustment between the zemindars and ryots. Your petitioners do not know how it is possible more conclusively to show that the ruling power neither fixed nor attempted to fix in Bengal the rates of rent which the ryots were to pay; and any attempt on the part of Government to establish by their own authority pergunnah rates and to prevent the zemindar from obtaining an increase of rent will be a great and novel departure from both the ancient and the existing law of the country.

34. The Government of India in their despatch¶ cite two instances in which it is alleged that the rates were fixed by Government Collectors. It is stated that rates were fixed in the vicinity of Calcutta and in part of Dinagepur when under the management of Mr. Hatch. It does not appear under what circumstances the rates of rent were fixed by the Collectors in these two instances. It is possible that the estates for which the rates were fixed were either the property of the Government or under the management of the Collector, and in either case the Collector would be merely exercising the powers of an ordinary zemindar. If, on the contrary, the Collector fixed the rates in estates of which he was not the manager, he did what he had no authority either under the ancient land law or the regulation law to do. The Collectors were absolutely prohibited by Regulation 2, 1793, from interfering between landlords and their tenants, and the instances relied upon by the Government of India, if not otherwise explainable, would be isolated acts of unauthorized power, which cannot be converted into precedents against the zemindars.

35. As a further support to their position that the Government could fix the rent of the ryots, the Government of India quote in their despatch** an extract from the middle of a paragraph of a minute of Lord Cornwallis. But if the opening sentences of the same paragraph had been given, the meaning would have been exactly the reverse of the interpretation which is sought to be placed upon it by the Government of India.

36. In this paragraph Lord Cornwallis was meeting an objection of Mr. Shore with regard to the abolition of arbitrary imposts of cesses which the zemindars had been in the habit of exacting from the ryots over and above the stipulated amount of their rent. Mr. Shore contended that to prohibit the levy of these cesses was "tantamount to saying to the zemindar that you shall not raise the rents of your estates." This Lord Cornwallis denied, on the very natural ground that the zemindars were as much bound by their agreements as other people; and that it was a direct infringement of the law of the land to allow them to violate those agreements. The opening sentences of the paragraph, from which the extract is taken, are these :—††

"Every bigha of land possessed by the ryots must have been cultivated *under an express or implied agreement that a certain sum should be paid for each bigha of produce and no more.* Every cess or tax imposed by the zemindar over and above that sum is not only a breach of that *agreement*, but a direct violation of the established laws of the country. The cultivator therefore has in such a case an undoubted right to apply to Government for the protection of his property, and Government is at all times bound to afford him redress." Then follows the extract relied upon by the Government of India. "I do not hesitate to give it as my opinion that the zemindars neither now nor ever could possess a right to impose taxes or abwabs upon the ryots; and if from the confusions which prevailed towards the close of the Mogul Government, or neglect or want of information, since we have had possession of country, new abwabs have been imposed by the zemindars or farmers, that Government has an undoubted right to abolish such as are oppressive, and have never been confirmed by a competent authority, and to establish such regulations as may prevent the practice of like abuses in future." It is quite clear that Lord Cornwallis was not speaking of rent, but of taxes which the zemindars levied in addition to the rent, and which of course could only be imposed by the ruling power. This is clear from the following sentences. "Neither is the privilege, which the ryots in many

* Para 388.
† 2 Har. Analysis, 70
‡ Minute of September 18, 1789, paras. 392, 397.
§ 2 Har Analysis, 67
‖ Id 70.
¶ Para. 65.
** Para 41
†† Lord Cornwallis' minute, February 3rd, 1790.

parts of Bengal enjoy, of holding possession of the spots of land which they cultivate so long as they pay the revenue assessed upon them, by any means incompatible with the proprietary rights of the zemindars. Whoever cultivates the land, the zemindars can receive no more than the *established* rent, which in most places is *fully equal to what the cultivator can afford to pay.*" The established rent being, as he had before stated, "the sum certain and no more," which the ryot, whether resident or non-resident, had agreed to pay. He then proceeds. "To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit." And he might have added that it would have been an infringement of the customary law, under which khudkast ryots were entitled to hold their lands so long as they were willing to pay the general rates which were settled for the village or pergunnah in which they lived: these rates being periodically revised with reference to the nature of the soil, and the value of the crops it produced.

37. That the zemindar had power to enhance his rents is further clear from the paragraph which immediately follows the extract upon which the Government of India relies.

"Neither is prohibiting the landholder to impose new cesses or taxes on the land in cultivation tantamount to saying to him that he shall not raise the rents of his estates. The rents of an estate are not to be raised by imposition of new cesses or taxes on every bigha of land in cultivation; on the contrary, they will be lowered by such impositions, for when the rate of assessment becomes so oppressive as not to leave the ryot a sufficient share of the produce for the maintenance of his family, he must at length *desert the land.* The rents of an estate can only be raised by inducing the ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste land." "The basis and scope of this opinion," as Mr. Justice Field points out, "becomes clear when we find Lord Cornwallis saying in the same context that the rent then established was in most places fully equal to what the cultivator could afford to pay."*

38. And if we turn to the Regulations which Lord Cornwallis afterwards enacted, we shall find that so far from desiring to establish a rate of rent, irrespective of the agreements which the zemindar and ryots might make, his great object was to encourage the parties to come to an adjustment between themselves. All that he insisted upon was that the zemindars should consolidate the cesses with the rent, and that the leases should be in a proper form, and should specify the exact sum to be paid as rent;† but subject to these restrictions the right of the zemindars to enhance the rents of the ryots, by measuring and assessing the lands, according to the nature of the crops grown upon them, was expressly affirmed.‡ The new rent after enhancement continued to be the "established" rent of the village, until it was in its turn superseded by a fresh agreement. There is not the slightest indication in any of the Regulations that the Government ever dreamt of establishing rates of rents which the zemindar was not to be at liberty to enhance. On the contrary, the Regulations distinctly recognize the power of the zemindars to make general measurements for the purpose of equalizing and correcting the assessment.§ We know as a matter of fact that, immediately after the Permanent Settlement, rents were constantly raised and adjusted, both by the Government in their private estates, and by the zemindars in their estates; and in 1812 a Regulation‖ was passed, not to prohibit enhancements, which the Legislature would have done, if enhancements had been illegal, but to provide a procedure which was to be followed for enforcing them. So far, indeed, from the zemindars not being able to enhance their rents under the Permanent Settlement Regulations, the charge brought against Lord Cornwallis by the peasant proprietary school has always been that he did not deprive the zemindars of this power, but "left them to make their own settlement with the ryots on such terms as they might choose to require."¶

39. To prevent, therefore, a zemindar from making an agreement with his ryot for an increase of rent, is not only an infringement of the personal right of contract which all enjoy, but is opposed to both the Regulation and ancient law, which it is the professed desire of the Government of India to restore.

40. In connection with this subject your petitioners would next invite your Lordship's attention to the proposal of the Government of India to fix a maximum rate of rent for the whole of Bengal and Behar.** The limit originally proposed was 25 per cent. of the gross produce calculated in staple crops, but before the Bill was introduced into Council, this limit was at the suggestion of the Lieutenant-Governor reduced to one-fifth. The Government of India say in their despatch:—"The limit of 25 per cent. of the gross produce of the staple crops is advocated because it corresponds to the "rebba" or money rental taken by the Government of the Moguls, and because one-half being the usual share of the landlord when the rent is taken in hand, one-fourth appears to be a fair proportion when the risk is borne by the tenant." No enquiry whatever is made as to whether the circumstances of one part of the country differ from the circumstances of another part of the country, but the zemindars suddenly find that the Government have determined to fix a maximum rate of rent for the whole province, because it is supposed to correspond with the "rebba" or money rental taken by the Government of the Mogul, just 300 years ago!

* Mr. Justice Field on Landholding, page 540.
† Reg. VIII, 1793, s. 54-57. Reg. IV, 1794, s. 6.
‡ Reg. VIII, 1793, s. 56, 57-60.
§ Reg. VIII, 1793, s. 60.
‖ Reg. V, 1812.
¶ Mr. Justice Field on Landholding, p. 525.
** See para. 75 of the despatch.

41. But if the proposal of the Government of India is examined, it will be found to agree neither in theory nor in fact with the Mogul assessment. In the first place, Akbar took one-third and not one-fourth of the produce as the Government share,* while Aurungzeeb claimed an equal division of the crop.† There was therefore no fixed "rebba" as the Government suppose. In the second place, the Mogul assessment was calculated, not upon staple crops, but upon all crops. The proposal of the Government of India is to calculate the rent on the common or staple crops, and to leave out of consideration all the valuable crops, such as sugarcane, cotton, opium, jute, tobacco, mulberry, &c. In the third place, the Mogul land tax in Bengal was assessed upon the zemindars and not upon the cultivators; and if the zemindars had to pay one-fourth to the Government, they must have realized very much more from the ryots. As your petitioners have already pointed out,‡ the Mogul Government merely assessed the zemindars and never interfered to regulate the rents which the ryots had no pay. The conclusions of the Government of India are therefore founded upon pure theory and speculation.

42. So far from the rents of the ryots being limited before the Permanent Settlement to one-fourth of the gross produce calculated in staple crops, Mr. Shore states that the rents varied from half to three-fifths of the gross produce.§ Since the Permanent Settlement two causes have contributed to lighten rents—first, the rise in the market price of staple crops; secondly, the great extension in the cultivation of the more valuable products. There is of course an enormous difference arising from local circumstances in the rents of different districts. As observed by Mr. Shore, the rates of rent depend upon an infinite variety of circumstances, and are beyond the province of Government to settle. At the present time it is not pretended that the rates of rent are high in Bengal: on the contrary, it is admitted that in many districts the rents are below what the landlords might reasonably demand. If this is so, and so far as Bengal is concerned, no allegation is made that the ryots are over-rented, what conceivable justification can there be for fixing an arbitrary and maximum rate of rent for the whole of Bengal and Behar?

43. But if a new principle is to be introduced, and the rents are to be fixed and stereotyped according to the gross produce of the land, why are all the valuable crops to be left out of consideration? Why is this great and novel departure to be made from present practice and the usages of all past time? In the minute already referred to, Lord Cornwallis recognized the cultivation of the more valuable articles of produce as a legitimate ground for enhancing rents.‖ Mr. Shore, writing of the ancient law, says "the more profitable articles, such as the mulberry plant, betel leaf, tobacco and sugarcane, render the value of the land proportionably great,"¶ and further "that it was understood, as a prescriptive law, that a resident ryot could not change the species of cultivation without a forfeiture of the right of occupancy."** This ancient and prescriptive law was re-enacted by the Regulations, which provide that "in the event of the species of produce being changed, a new engagement shall be executed for the remaining term of the first lease, or for a longer period if agreed on; and in the event of any new species being cultivated, a new engagement is to be executed accordingly.†† Why then are all the valuable crops to be now left out of consideration, and the fairness of the rent to be judged by the value of staple crops alone? It is of course easy to prove that the richest ryot is rack-rented if no account is to be taken of the crops from which his chief profit is derived.

44. Your petitioners cannot better illustrate their position than by quoting an extract from a report‡‡ recently submitted to Government by the Hon'ble T. M. Gibbon, a planter of Chumparun, and now a member of the Governor-General's Legislative Council. In speaking of certain enquiries which had been made by the Government as to the incidence of rents in Behar, where it is alleged the ryots are rack-rented, he observes as follows:—

"Mr. Finucane, whose reports are largely quoted, enters more fully into the subject. He has taken the relative prices of edible crops now and some 40 years ago as the basis of his argument: but he has made the mistake of considering staple crops to consist of cereals only. He has omitted to take the area under opium, potatoes, tobacco, cotton, fibres of sorts, dyes of sorts, turmeric, ginger, sugarcane, oilseeds, &c., into consideration, and he has failed to take into consideration the *extraordinary increase that has taken place in the cultivation of these crops since the Permanent Settlement.* In 1840 Government distributed 37 lakhs of rupees throughout India for opium; in 1881-82 it distributed nearly six times that sum. To make an exact estimate of the value of the gross produce of the country in 1793, and now I presume to be impossible, and until it is done all comparison between the average value of lands at the time of the Permanent Settlement and now must be deceptive. We, planters, without any access to figures, can but form our opinions from what we see going on around us: we can but see that the province has made the most extraordinary strides in prosperity of late years, and we believe that it was the intention of the Legislature that the zemindar should share in it with the ryot. That some ryots on each estate may be rack-rented is not only possible, but very probable. Some lands may be rack-rented at two rupees an acre, whereas lands in their vicinity may be

* See the Ayeen Akbery translated by Gladwin, vol. I, p. 285.
† Brigg's Land Tax, p. 127.
‡ Ante para. 32.
§ Shore's Minute, Dec. 8, 1789, para. 5.
‖ Ante para. 37.
¶ Minute of September 18, 1789, para. 391.
** Id. para. 406.
†† Reg. VIII., 1793, s. 56.
‡‡ Published at page 1956 of the supplement to the *Gazette of India*, Oct. 20, 1883.

cheap at ten rupees. It is difficult to believe that a district which is able to pay the greater portion of its landlord's rent from the produce of any one crop grown in it can be rack-rented, and that it requires the drastic remedies people have recommended for it. Chumparun, which pays its landlords in round figures, some 24 lakhs of rupees, and has a million and a half acres of land under cultivation, receives from 16 to 18 lakhs of rupees per annum for 70,000 acres under poppy. Shahabad and Gya might meet their landlord's rent from the proceeds of the sugarcane crop alone; the value of sugar carried by the Gya State Railway from the town of Gya was valued at 37 lakhs for one season. Tirhoot and Durbhunga might pay their rents from the proceeds of the tobacco crop."

45. If Mr. Gibbon's conclusions are correct, and he speaks from practical experience and not from theory, a ryot may be rack-rented with regard to one acre of land for which he pays Rs. 2, and under-rented for another acre for which he pays Rs. 10. This is exactly the state of affairs which has always existed and must necessarily exist. A ryot may be over-rented as to some land, but he is compensated by receiving other land at a favourable rate. As Mr. Shore observed of the period before the Permanent Settlement, "when the rents become too heavy, the zemindar allows the ryots a compensation by giving them other lands at a favourable rate."* But the Government proposal altogether ignores this system of compensation. Where rents vary so enormously even in single villages, where they are fixed with reference to the nature of the soil and the value of its produce, it seems incredible that a maximum rate of rent should be proposed, not for a single village, but for a whole province.

46. Your petitioners would further ask your Lordship to consider what the natural result of fixing a maximum rate will be. In some districts, where, from the poverty of the soil or the risks of inundation or the backwardness of agriculture, the more valuable products are not grown, the maximum rate may far exceed the ordinary rents of the ryots. At present the zemindars are content with the rents they are receiving; but will they rest contented when a maximum rate has been promulgated by authority? Will they not naturally consider that they have a right to get what the Government says they are entitled to receive? In those districts, therefore, there will be a general rush to the courts for enhancements. In other districts where the soil is better and the more valuable crops are grown, but the rents, though perfectly fair and reasonable, exceed one-fifth of the value of the produce calculated in *staple* crops, there will be an enormous depreciation of property, and the landlords will be simply ruined for an idea. Your petitioners venture to think that in the light of the facts adduced by them, your Lordship will not sanction any such legislation.

47. There is one further remark which your petitioners would make in connection with this part of the subject. Since the despatch was submitted to your Lordship, the Government of Bengal have deputed certain officers to make experimental enquiries as to the practicability of fixing rates. These officers have all reported that the scheme is absolutely impracticable. In some places, so great was the diversity of soil, and its productive capacity, that there were found to be thirty different rates in a single village. In other villages there were no rates at all. The land was taken as a whole, and a lump sum fixed for the rent. It thus appears that the scheme, even if specious in theory, is impossible in practice; and yet it is seriously proposed to upset the existing relations of landlords and tenants throughout a whole province for the sake of an impracticable idea.

48. Your petitioners will next consider the provisions of the Bill which concedes to the occupancy ryot the right to sell or transfer the land without the landlord's consent. It cannot for a moment be contended that this provision is in accordance with either the ancient or the existing law, of the land. Under the ancient law, a ryot who relinquished any part of the land in his possession or changed the species of cultivation forfeited his occupancy rights.† It is also expressly declared by the Regulations that an occupancy ryot has *no right of property or transferable possession in the soil.*‡ The present Bill gives the ryot the power of selling or transferring the land without the landlord's consent. No restriction whatever is imposed. The purchaser need not even be a cultivator. He may be a land speculator, a money-lender, or an insolvent. But whoever he is, the zemindar is bound to accept him as his tenant. If this right of free sale is now given to the ryot, it can only be given at the expense of the zemindars. The zemindars altogether object to the concession of such a right. They say, and not unreasonably, that it will seriously depreciate the value of their property. The class of people who will purchase these occupancy rights in Bengal are the mahajuns or money-lenders. These people will not cultivate themselves, but will sublet to an inferior class of tenants. There will thus be introduced a middleman between the landlord and the actual cultivator. The landlord ought surely to have some voice in the selection of his tenants. A notorious robber or dacoit may buy up these occupancy rights and locate himself in the heart of the estate to the consternation of the landlord and tenants alike. The owner may see his property ruined by bad cultivation, or his peace and quietness may be destroyed by his bitterest enemy settling in his midst, and yet he will be powerless to interfere.

49. To the occupancy ryots themselves the concession of free sale will be a most dubious advantage. Indebted as most of them are to the money-lender, in a few years they will be sold out of house and home. At present their land is safe from the money-lender's grasp.

* Minute of September 18, 1789, para. 398.
† Shore's Minute, September 18, 1789, para. 406, ante para.
‡ Reg. VII, 1799, s. 15, c. 17.

He is, therefore, obliged to assist them in times of difficulty, for his only hope of recovering his money is the prospect of a harvest. But make their land saleable, and he will have no need to wait for a future harvest; the land will satisfy his demand, and what matters it to him if the ryot is reduced to beggary. We shall have in Bengal, what we had in the Deccan from a similar cause, a peasantry reduced to a hopeless state of poverty and destitution.

50. It is idle to expect that these occupancy rights when sold will be purchased by cultivators. They have not as a body the capital to purchase such rights. One result must inevitably follow. In a few years the cultivating occupancy ryot will have disappeared; and in his place will be a ryot absolutely without rights, holding as a tenant-at-will under a capitalist who has bought up the land as a mere speculation.

51. That this is the tendency of the measure was admitted by Mr. Ilbert, who said when introducing the Bill into Council, that "the powers of transferring which the Bill recognizes may in time lead to a state of things in which the great bulk of the actual cultivators would be, not occupancy ryots, but under-ryots with little protection from the law, is indeed within the range of possibility; but if such a state of things should ever arise, we may rest assured that the Government of the day will know how to deal with it." It is admitted, therefore, that the Bill will reproduce the very evils it was intended to remove, and the rights, which the zemindars at present possess over the land, will be taken from them, merely to fall into the hands of money-lenders and speculators, while the actual cultivators will be in a worse condition than before. Nor in this denied by the Government of India in their despatch, but they content themselves with simply observing that their legislative authority will not be exhausted by the present measure, and that at a future date they will be prepared to introduce another measure of the same nature to remedy the evils caused by their present legislation.

52. It is a remarkable feature in the Bill that, while a zemindar and an occupancy ryot can enter into no contract, the capitalist, who buys up the occupancy rights, can sub-let the land on any terms he pleases. *His* tenant has no rights whatever against him. No prohibition is placed upon his freedom of contract: it is the zemindar alone who cannot deal as he pleases with his own.

53. It is true that the Bill secures to the zemindar a right of pre-emption in case the ryot wishes to sell his land. But this right is simply illusory. The Bill which places the zemindar under a disability to contract is equally careful to render his right of pre-emption absolutely valueless. He may buy out the ryot, but he cannot buy up the occupancy rights. If he re-lets the land, he is compelled to let it to the new tenant on exactly the same terms and at the same rents as those on which the old tenant held. Moreover, he must either give the price asked by the tenant, or bring a suit in the Civil Court to have the proper value ascertained. And after all this, he literally buys nothing. The money-lender who purchases can sub-let the land and dictate his own terms; but the zemindar can enter into no agreement; the law re-lets the land for him, and at the old rent. The zemindar is reduced to the position of a cypher. The whole interest in the land will be vested in the settled ryot, or in those who purchase the interest of the settled ryot. The zemindar is the only person who cannot acquire this interest. The money-lender may acquire it, the speculator may acquire it, but the zemindar cannot acquire it. The only method by which a zemindar can in future possess any proprietary interest in land will be by buying up the occupancy rights of the ryots of a rival zemindar. As a settled ryot of a rival zemindar he will be a proprietor, but he can have no proprietary rights on his own estate.

54 Your petitioners would next ask your Lordship's attention to the provision in the Bill,† which actually proposes to confer rights on the land itself. It gives a status to the land apart from ownership. A somewhat similar proposal was made by the Government of India, in their despatch,‡ but was disallowed by your Lordship.§ There is at the present time throughout Bengal a vast extent of waste or uncultivated land. In this land no one has any interest, or claims any interest, except the zemindar. It is absolutely valueless until brought into cultivation, and it is the interest of the zemindar to bring it into cultivation. But he is no more free to deal with this land, in which no one can possibly have any right, than he has with land which has been held by ryots for a century. All land which is not at the present moment actually cultivated by the zemindar himself is declared to be ryoti land, and in this category will fall all the waste and uncultivated land in Bengal. Such a provision would be intelligible in a country where the land belonged to village communities. But there are no village communities in Bengal. The land is admittedly the zemindars, and yet it is to be impressed with dormant rights and privileges for the benefit of prospective tenants.

55. Your petitioners will only call attention to one further paragraph in the Government of India's despatch.‖ The passage to which your petitioners allude is as follows:—"The more cautiously worded evidence of Mr. Holt Mackenzie in 1832 confirms the impression that, except in a few districts, the rights of the ryots had been reduced to a minimum. In 1841 and 1845 sale laws were enacted, which according to high authority (though the opinion is disputed) gave purchasers power to eject resident ryots whose tenures were created after the Permanent Settlement, and to

* Para. 4.
† Section 6 of the Bill.
‡ Paras. 57-62.
§ Secretary of State's despatch, paras. 8, 9.
‖ Para. 105.

assess them, if not ejected at discretion .....Thus it was that zemindars became invested with the powers of private distraint and private summons which they notoriously abused."

56. It is of course impossible to reply to the vague general statements contained in the above extract. The Government of India do not state in what way the rights of the ryots had been reduced to a minimum, but if it is intended to assert that the zemindars derived their power of ejecting their ryots and distraining their crops from the sale laws, the assertion is one which can be readily disproved. In the first place, the power of distraint existed long before any sale law was passed. The same Regulation* which deprived the zemindars of the power of confining and inflicting corporal punishment upon their ryots, expressly vested them with the powers of distraint. The power of ejectment they always possessed, but for obvious reasons it was rarely resorted to. It is a fallacy to suppose, and the fallacy pervades the whole of the Government of India's despatch, that the zemindars are anxious to eject their ryots. On the contrary, they have always been most anxious to retain them. It is their interest to do so. The loss of a ryot causes an immediate diminution of the zemindar's rent-roll. Suits for ejectment are never brought except as a last resort, where the ryot persistently refuses to pay his rent, and it should be further observed that the number of ejectment suits instituted in the Courts by no means represents the number of ejectments which actually take place. The ryot generally pays up the arrears, and decrees for ejectment are rarely executed.

57. It would extend the length of this memorial beyond all reasonable limits if your petitioners were to attempt to comment on the details of the Bill. Your petitioners have therefore contented themselves with inviting your Lordship's attention to the principles of the Bill, and if the principles cannot be supported, the details necessarily fall with them. Your petitioners will, in conclusion, address themselves to the question whether any political necessity has been made out by the Government for a measure, which your petitioners cannot but regard as revolutionary in its character and subversive of all the rights of property in Bengal. If the Government had made out a case of emergent necessity, if the state of the peasantry had all of a sudden become so desperately deplorable, that no remedies but those purposed, could be resorted to, some justification might have been urged for the present legislation. But your petitioners demur to be made the victims of political expediency, based on the theories of the peasant-proprietary school, that in all countries the land should be held by the people, and that landlords should be abolished. Those theories your petitioners will not discuss, for they feel sure that your Lordship will regard the matter as a practical statesman, and not allow the law of the country and all existing rights of property to be subverted, unless you are satisfied that a crisis of such emergency has arisen as to demand so drastic a remedy.

58. In dealing with this part of the subject your petitioners' experience one great difficulty. The despatch of the Government of India contains charges against the zemindars in abundance, but no facts are given to support them, unless the opinions of a few prejudiced officers "of the peasant proprietary school" are to be accepted in the place of proof.

59. It is said in the despatch† that "for the last nine or ten years a general revision of some of the substantive portions of the rent law has been regarded as at some time inevitable, and has been advocated by none more eagerly than the zemindars themselves." It is quite true that the zemindars of Bengal asked for a revision of the rent law particularly in regard to the difficulties experienced by them in the collection of their rents. Formerly rent-suits were tried by the Collectors, and were charged with a stamp fee of one-fourth the amount required for an ordinary civil suit. In 1869 the law was changed, and rent-suits were made over to the Civil Courts, and the full stamp fee was exacted.‡ Instead of conducting their cases by their own agents, as they had previously done, the zemindars had to employ the pleaders of the Civil Court to conduct them. The consequence was an enormous increase in the cost of litigation. A rent suit became an ordinary civil suit conducted with all the delay and all the expense inseparable from civil proceedings. In 1870 the Road Cess Act was passed, and the zemindars had to pay the entire assessment with the duty of collecting three-fourths of the tax from the ryots. With these new and onerous burdens cast upon them the zemindars not unnaturally suggested that a more summary and cheaper method than the tedious and expensive process of a civil suit might be provided to enable them to realize their rents. Successive Lieutenant-Governors admitted the reasonableness of this request. They also admitted that the zemindars experienced great difficulties in obtaining a legitimate enhancement of their rent.

60. Nor is this denied by the Government of India. In the 18th paragraph of their despatch they express their concurrence in the following remarks of Sir Ashley Eden that, under the present procedure, the recovery of rent by legal process, and when the arrear is not disputed, is so tedious and costly as practically in many cases to involve a denial of justice, and that if the zemindars are to be required, as they are, to pay the Road and Public Works cesses, recovering half the amounts from the subordinate holders, the Government was bound in equity to aid them in obtaining their dues from the ryots." And with regard to enhancement of rent, the Government of India observe in paragraph 8: "Where prosperity and advancing knowledge have enabled the ryots to resist illegal or unjustifiable proceedings" (these unjustifiable proceedings being the measurement by the landlords of their estates—a right

* Regulation passed, July 20th, 1792, and re-enacted by Reg XVII of 1793.
† Para 5.
‡ Act VIII, 1869 (Bengal Council).

which they have exercised from time immemorial, both under the ancient and existing law) "the zemindars have failed to obtain their fair share in the increasing value of produce, and have often found difficulty in collecting the existing rental." Does then the fact that the zemindars have asked for certain changes in the law, which the Government itself admits they can fairly and reasonably ask for, justify the revolutionary changes now contemplated by the Government of India? How are the reasonable requests of the zemindars met by the proposed legislation? No increased facilities are given them for the collection of their rents; and they are practically debarred from enhancing rents at all. They are prohibited from entering into any contract with their ryots; they are placed under the tutelage of a revenue officer; they are prohibited from exercising the rights which they were declared by the Permanent Settlement Regulations* to possess "of letting their lands on such terms as they pleased;"* their land is converted into ryoti land, and a maximum rate of rent is arbitrarily fixed for the whole of their estates. Is such legislation the legitimate outcome of their requests? If their requests were reasonable, is this the way in which the Government should meet them? How can their reasonable requests justify this new departure from the lines of all previous legislation?

61. As to political necessity so far as Bengal is concerned, the case against the zemindars is stated in paragraphs 8 and 35 of the despatch. Your petitioners will quote a short extract: "From 1870 onwards a distinction is observable in the reports from the three provinces of Orissa, Bengal Proper, and Behar respectively. The difficulties which the Legislature has now to encounter have assumed different shapes in different places; in the East there have been combinations of ryots refusing to pay rent; from the West and South we have indisputable evidence of oppressive conduct on the part of the zemindars."† The logical conclusion from these premises would be that two Acts were required—one to protect the ryot in Behar from the alleged oppression of the zemindar, the other to protect the zemindar in Bengal from the undue ascendancy of the ryot.

62. In the following extract from paragraph 35 of the despatch, the question of political necessity, so far as Bengal is concerned, is again alluded to. "In regard to Eastern Bengal it would involve misapprehension to imagine either that serious rent disputes, culminating in turbulence, were a novelty in 1873, or that even at the present time when that *part of the country is quiet and prosperous*,‡ there is no risk of further agitation and commotion. *The comparative weakness of the zemindars* in the Eastern districts is not a reason for refraining from interposition in that portion of the Lower Provinces. If they feel that their traditional power is shaken, they are the less likely to be scrupulous in its tenacious defence. If the ryots perceive that they can sometimes *resist even legitimate demands* with impunity, there is no probability that they will exercise any generous control. Only last summer a fresh application was submitted by the Commissioner of the Rajshahye Division for special police in the Pubna district, the Magistrate having reported that the conditions of the dispute were unchanged, and that if the force were withdrawn disturbance would again break out." And yet the Commissioner of Rajshahye, who had asked for this police force in the preceding summer, is opposed to every provision of the Bill.

63. But apart from this circumstance, do the facts set out in the above extract justify the present legislation? Is the "*comparative weakness of the zemindars*" a reason for making them still weaker; for handing over all their rights to the ryots in order to remove the probability of future disputes? The circumstances disclosed might justify legislation to strengthen the hands of the zemindars, but not to weaken them still further. Moreover, it must be remembered that these agrarian disturbances were successfully dealt with by Sir R. Temple, when Lieutenant-Governor of Bengal. He passed, it is true, an Agrarian Disputes Act,§ but it was never once brought into operation. Nor had the Act, though sufficient for the occasion, anything revolutionary about it. Its scope and object is thus described by Sir R. Temple himself. "I recommend that the local Government should have the power upon good cause shown of appointing the Collector to settle authoritatively disputes of the nature above described, and to enforce awards. There need not be any power taken to interfere unduly between landlord and tenant, but only when the parties might apply for our interposition, and when such interposition might appear necessary for peace and good government. There would be no necessity for giving more power to the Collector in fixing rent rates than that which is given by the existing law to the courts of justice. There would be nothing of a one-sided character in the matter. The interposition need not extend beyond certain limits, and would be limited to matters of rent, and its rates and the measurement of land as affecting such rents." If this measure, when agrarian disputes were actually existing, was sufficient for the emergency, what justification can there be for the present measure, now that these disturbances have ceased to exist?

64. The only other plea of political necessity, so far as Bengal is concerned, is contained in the 54th paragraph of the despatch. It is to the effect that landlords in Bengal have by illegal contracts prevented the growth of occupancy rights. It is not very apparent why contracts, which the law sanctions, are termed illegal‖ Act X, 1859, which conferred this right of occupancy on the ryots, expressly enacted that it should not accrue if the lease to the tenant so provided. Even with this restriction Sir Barnes Peacock, then a member of the Legislative Council, was strongly opposed to it, as being an infringement

* Reg. VIII, 1793, s. 52.
† Para 8.
‡ The italics are your petitioners.
§ Bengal Act VI of 1876.
‖ Paragraph 55.

of the undoubted rights of the zemindars. It is now, however, made a charge against the zemindars that they have used the power, expressly reserved to them by the Legislature, to prevent the growth of this right of occupancy, and the exercise by the zemindars of this power is denounced as opposed to public policy. It is difficult to understand how what is sanctioned by the Legislature can be opposed to public policy. Moreover, the general assertion that the zemindars have unduly prevented the growth of this occupancy right is refuted by the fact mentioned in the statement of the objects and reasons of the Bill, that 90 per cent. of the ryots of Bengal already possess occupancy rights.* And if this result has been obtained under a system of free contracts, there can be no conceivable reason for alte ing the law. But under no circumstances could the present Bill be supported on the ground that contracts have been made to defeat the growth of an occupancy right, because the drastic measures proposed go far beyond the necessity of the case.

65. With regard to the charge made against the Behar zemindars, that the landlords shift the ryots from field to field to prevent the growth of occupancy rights, your petitioners believe that this charge against the Behar zemindars is without foundation, but it is unnecessary to discuss this subject further, as your petitioners understand that the Behar landholders are addressing your Lordship separately on the subject: but your petitioners will leave this point for the Behar zemindars separately to discuss.

66. The next ground of political necessity alleged is that the ryots are rack-rented. This charge is particularly directed against the zemindars of Behar. There is no allegation that the ryots are over-rented in Bengal, and if there is, here is certainly no proof of it. On the contrary, it is admitted that in a great part of Bengal landlords "have not obtained their fair share in the increasing value of the produce."† The grounds upon which the Government of India have arrived at the opinion that the ryots are rack-rented in Behar are stated in the following extract from para. 32 of the despatch:—

"The Collector of Patna reports that the mass of the tenantry are now paying rents which have doubled in the last 16 years. The Covenanted Deputy Collector of Gya Mr. Finucane) calculates that the rental of the different districts is at present from twice to four times the amount paid at the time of the Permanent Settlem nt. Mr. Reynolds shows from the road cess returns that the incidence of rent is higher in the Patna district than in any other district of Bengal."

67. But would any one be justified in assuming from such statements that the ryots are rack-rented. During the present year Mr. Finucane, who is a strong partizan of the ryots, has been deputed to investige the rates of rent in Behar, and other officers have been deputed to do the same in Bengal. One of these officers (Mr. Macpherson) gives an instance of a Government estate in which the aggregate rents in 1873 amounted to Rs. 9,122, and in 1878 they were raised to Rs. 25,509. Here was a rise of 300 per cent. in five years. And yet the increase was perfectly legitimate. Mr. Macpherson states that the ryots practically dictated their own terms,‡ as the land was in excess of the demand. A rent is not necessarily rack-rent because it is double what it was ten years ago. A rack-rent is a rent which does not leave to the cultivator a fair return for the labour and outlay incurred by him on the land. Is there the slightest evidence before the Government that the ryots of Behar do not realize a fair profit from their lands? No enquiries whatever on the subject have ever been made. From an old Regulation published in 1795,§ it appears that the rates then paid in the province of Benares for tobacco land was Rs. 6 a bigah, and for sugarcane land Rs. 5 a bigah: and it is a singular fact that in hardly any instance, and then only for very small plots, did Mr. Finucane find rates so high as Rs. 6 a bigah. The average rates seem to have varied from Rs. 3 to Re. 1 a bigah. The mistake Mr. Finucane made was, as pointed out by Mr. Gibbon in the extract already quoted,|| that he es imated these rates with reference to the gross produce of the land in staple crops, leaving out of consideration all the valuable products, from which the ryot's chief profits were derived. It is obvious that such enquiries are absolutely worthless, and the assertion of the Government of India that the ryots of Behar are rack-rented is, so far as the evidence goes, entirely without foundation.

68. It should further be observed that the zemindars of Behar, in a memorial to Government, distinctly denied that the ryots were rack-rented, and challenged an enquiry, and the only facts which the Government have been able to adduce to disprove the zemindar's denial are Mr. Finucane's figures, and Mr Reynolds' deductions from the road cess returns. But it is obvious that no conclusion can be drawn from simply comparing the gross rental of one district with the gross rental of another district without at the same time knowing the area under cultivation, the nature of the soil and its crops, and the gross value of the produce of the districts between which the comparison is made. Unless these facts are known, how is it possible to form any opinion of the incidence of rent, or to compare one district with another?

69. Your petitioners will next ask your Lordship to consider how it comes to pass at this present time of peace, prosperity and contentment that this extraordinary

---

* Paragraph 26 of the Statement of Objects and Reasons annexed to the Bill.
† Paragraph 8 of the Government of India's despatch.
‡ Mr. Macpherson's report published at page 1765 *of the Supplement to the Gazette of India*, October, 20th, 1883.
§ Reg. 51, 1795, s. 2.
|| Ante para. 44.

legislation is required. In 1877 Sir Ashley Eden, the late Lieutenant-Governor, thus describes the prosperity of Eastern Bengal:—

"I have just returned from visiting the eastern districts, and I may say on this occasion, when my administration is only at the commencement, what I could not well say at a later period, without seeming to take credit for the Government of which I am the head. Great as was the progress which I knew had been in the position of the cultivating classes, I was quite unprepared to find them occupying a position so different from that which I remembered them to occupy when I first came to the country. They were then poor and oppressed, with little incentive to increase the productive powers of the soil. I find them now as prosperous, as independent, and as comfortable as the peasantry, I believe, of any country in the world; well fed, well clothed, free to enjoy the full benefit of their own labours and to hold their own and *obtain prompt redress for any wrong.*"

70. In 1881 in reply to an address from the Behar Landholders, Association the same distinguished officer thus speaks of Behar, where the state of things is now supposed to be so deplorable:—

"I can assure you that nothing has given me greater pleasure than to notice. as I have had ample opportunities of doing, the extraordinary improvement in the condition of the people. It is made manifest in a hundred ways daily, even to the most casual observer. I hear the same story from all classes, official and non-official, and it is a matter for general congratulation. The improvement is due to various causes, first and foremost, to several succeeding harvests, plentiful almost beyond the recollection of the present generation and these full harvests followed years of trial and famine; next, there has been with growing prosperity an increase in the value of land, a general awakening of the cultivating classes, and an improved knowledge of their legal rights and privileges; and this has, I hope, been accompanied by a strict administration of the law; then, there has been a greater readiness on the part of landlords to recognise and afirm the rights of cultivators, and I hope that this may, to some extent, be due to the influence of your Association."

71. Your petitioners are unwilling to encumber their memorial with further testimony of a similar nature, but they have annexed as an appendix to this memorial, extracts from the resolutions of successive Lieutenant-Governors from the years 1876 to 1881, and in none of those resolutions is there any indication that the Government considered the ryots rack-rented or oppressed, or that the condition of the peasantry required to be ameliorated by violent and radical changes of the existing law. If any weight is to be given to these Government resolutions, there is absolutely no excuse for the present measure. They represent an undeviating picture of the increasing wealth, the happy contentment, and the progressive improvement of the cultivating classes; and in the face of their own publ c resolutions, how is it possible for the Government to urge the plea of political necessity? The demand for the present measure has arisen from the peasant proprietary school of officials, and from them alone; and can only be supported if the peculiar theories of their school as to the rights of property and the doctrine of peasant proprietorship are to be maintained as the guiding principles of Government.

72. It is not the landholders only, whether Native or European, who are opposed to the measure, but the weight of official opinion is equally against is. Twice have the local officers been consulted and twice have they given the same verdict. If the members of the Government of India, who signed the despatch to your Lordship, including the present Lieutenant-Governor of Bengal, who was then a member of the Executive Council, are excluded, there are not five officers of any standing or position in the whole province who approve of the principles of the Bill. All the Commissioners of Bengal, the very officers who are entrusted with the general administration of the Province, are to a man opposed to the Bill. If this is so, and it cannot be denied, for the opinions of these officers have been published—it may well be asked upon whose authority has this measure been proposed? To this question the published papers afford an answer.

73. To understand, however, this part of the subject, it will be necessary very briefly to refer to the proceedings of the Rent Commission. The Commission consisted of seven members, of whom four were Calcutta officials, one a native official, and the remaining two zemindars. Most of the members recorded either separate "notes" or separate "remarks;" some of them recorded both. From first to last there was the greatest divergence of opinion among them.

74. This was not unnatural, for their proceedings differed from those of an ordinary Commission. They took no evidence; they examined no witnesses. They sat in Calcutta, and their respective conclusions were drawn from their own individual knowledge and reflected their own individual opinions. A great part of their time seems to have been devoted to a recondite research into the ancient land law of the country. The zemindar members of the Commission apparently took their stand upon the law as declared in the Regulations and recognized by the courts of justice; the extreme tenant-right view of the question was on the other hand supported by Mr. Mackenzie and Mr O'Kinealy on the authority of their own views and construction of the ancient land law of the country.

75. In his separate "remarks,"* Mr. Mackenzie points out the different standpoints taken by the zemindar members and himself. "They" (the zemindars), writes Mr. Mackenzie, "support, as they have every right to do, one side of a very vexed question. It is natural

* Rent Commission report, page 95, 96.

enough that they should as landholders themselves enunciate the highest theories of the character and extent of zemindary rights in Bengal. They make, of course, and quite legitimately, the very most of the terms "proprietors of the soil" and "landowners" used in the Legislation of 1793. They hold on tenaciously and rightly to the sheet anchor of their school, Sir Barnes Peacock; and they are, fortunately for them, able also to refer to the present Chief Justice, as having (though so far on the unargued case) accepted the views of the zemindary propaganda" Having thus disposed of the zemindars and the "sheet anchor of their school," Mr. Mackenzie proceeds to state the sources from which his own knowledge has been derived. "It is only at the cost of much dry study of old records, old laws, and old books, and from a close and critical examination of certain apparently anomalous survivals in the rural economy of the province, that one comes to learn that there is, even in permanently settled Bengal, quite another side to the land question, which is not represented in the zemindar's statement, which has been effected less than is supposed by modern legislation, which concerns the interests of vast masses of unfriended peasants, and which the occurrences of recent years make it necessary once for all to bring prominently under the consideration of Government and the Legislature."

76. But the members of the Commission were by no means unanimous as to the conclusion to be drawn from these "old records, old laws, old books, and the *anomalous survivals* in the rural economy of the province." Mr. Mackenzie and Mr. O'Kinealy in separate "notes" gave their own views of these old records and anomalous survivals; but the other members of the Commission altogether dissented from their extreme conclusions.

77. Eventually the report of the Commission and the Bill were drafted by Mr. Field, and it is difficult to say whose views they particularly represented. They were not extreme enough to meet the views of Messrs. Mackenzie and O'Kinealy; they were too extreme for the zemindar members, who dissented from them, and they were opposed in many important respects to the opinion of the President, Mr. Dampier. The report was, however, signed by Mr. Dampier, and he has stated his reasons for signing it in the following memorandum. "The points for the consideration of the Commission were so multifarious, the differences of opinion among the members were so numerous (ranging from a gradation of shades to direct contrast), and the difficulty of getting the report completed before the time at which the members must be scattered was so great that on many points I preferred to give my voice according to the opinion of the moment rather than prolong discussion, being satisfied that the point so brought forward would meet with full further discussion before the time came for taking action on it; and that I myself should have an opportunity of giving further consideration to it, and of expressing my ultimate opinion, after having had the advantage of having it so discussed."

78. With this great divergence of opinion the report was forwarded to the Government of Bengal, of which Mr. Mackenzie was then Secretary. The Government of Bengal were apparently dissatisfied with the report and the Bill, for Mr. Reynolds was deputed to prepare a revised Bill. It may not be out of place to say that Mr. Reynolds' views on the land question are somewhat extreme. In the debate which followed the introduction of the Bill in the Legislative Council, Mr. Reynolds expressed his opinion that the zemindars of Bengal had no right of property in their land, that "the expression right of property" when used in its modern and European sense connoted an idea foreign to the age and country." Entertaining these opinions, Mr. Reynolds naturally revised the Bill pretty much in accordance with the views of Messrs. Mackenzie and O'Kinealy—the minority of the Rent Commission. But even with this revision it fell short of the requirements of the Government of Bengal, and it was further revised by that Government before it was submitted to the Government of India.

79. In submitting the Bill to the Government of India, the Secretary to the Government of Bengal thus speaks of the official opinions, which the Government had invited upon the Bill. "In considering these criticisms the Lieutenant-Governor has felt bound to be specially careful to weigh and not merely to count opinions. If it should be thought that the views of the landlord class have received in these papers more than their fair share of support, it must be remembered that this is the class best able to represent its claims in an articulate shape, and most brought into personal contact with Government officers. It is evident also from some of the reports that want of leisure or inclination has prevented the writers from studying the report of the Commission thoroughly, and mastering the intricate subject under discussion in all its different bearings: while the small amount of settlement work in Bengal, and the transfer (in 1869) of rent suits to the civil courts, have, it is to be feared, deprived the younger generation of revenue officers of that intimate acquaintance with the rural economy of Bengal, possessed by their predecessors. It thus not unfrequently happens that the most offhand disparagement of the work of the Rent Commission proceeds from officers on whose judgment in revenue matters the Government is not in the habit of placing much reliance." The officers whose opinions are thus set aside, include among others, Mr. Dampier, the senior Member of the Board of Revenue, and all the Revenue Commissioners of Bengal. All these gentlemen are men of wide mofussil experience, and if the Government are not in the habit of placing much reliance on these officers in revenue matters, upon whose judgment, it may be asked, do they rely? The Government do not rely on the judicial officers, for in the 10th paragraph of the same letter the Secretary says that "the questions involved are most of them matters on which the opinion of revenue rather

than of judicial officers are likely to be important." After disposing of the opinions of judicial officers generally, he next proceeds to deal with Mr Justice Field. The Lieutenant-Governor has seen unofficially a copy of a minute by Mr Justice Field, the late Secretary of the Rent Commission, with reference to Mr. Reynolds' memorandum and the revised Bill. Free use has been made of Mr. Field's suggestions on certain points. But he has not had the advantage of seeing the detailed criticisms on the Commission's Bill" (upon which, according to Mr. Mackenzie, the Government placed no reliance), "or of discussing it point by point with officials and non-officials for months past, as has been done by the Lieutenant-Governor, his Secretary,* and Mr. Reynolds, and his own prejudices as drafted of the Commission's report and Bill were naturally enlisted on the side of their work. The Lieutenant-Governor has not therefore found it possible in many cases to admit the force of Mr. Field's objections to proposed modifications of the Commission's suggestions."

80. In the light of these facts your petitioners would ask whether this Bill does not stand self-condemned? It is hardly possible to conceive that the opinions of the highest officers of Government could have been treated with such contemptuous disregard, and it is equally singular that the despatch of the Government of India to your Lordship is absolutely silent as to this extraordinary feature of the case.

81. Your petitioners feel that they are justified from the moderate tone of your Lordship's despatch in assuming that your Lordship had no intention to sanction a measure for which, in its present form, there was no necessity, and which was in all its features a "great and novel departure from ancient custom and existing law." Your petitioners have attempted fully, fairly, and freely to lay their case before your Lordship, and they leave it with every confidence in your Lordship's hands.

82. Your petitioners in their present memorial have almost exclusively confined their remarks to the province of Bengal, as they understand that it is the intention of the Behar zemindars separately to address your Lordship with reference to their own province.

83. And in conclusion your petitioners would respectfully pray that your Lordship will direct that further proceedings in the matter of the Bill shall be stayed until your Lordship has had an opportunity of reconsidering the principles of the Bill in the light of the facts now placed before you.

And your petitioners, as in duty bound, will ever pray, &c., &c.

TOWN HALL:
Calcutta,
The 17th November 1883.

EXTRACTS FROM THE RESOLUTIONS OF THE LIEUTENANT-GOVERNOR OF BENGAL ON THE MATERIAL CONDITION OF THE PEASANTRY OF BENGAL.

1877.

BHAGULPORE DIVISION.

(*Supplement to the "Calcutta Gazette," September* 20th, 1877, *p.* 985.)

Fine crops at home and high prices abroad made the year a prosperous one for the cultivators. The Commissioner writes:—"The people are advancing, though slowly, in intelligence and wealth; they look happy and contented. Marriages are numerous, and fairs and religious festivals well attended. Coolies cannot be as easily obtained as formerly, and the prices of labour are supposed to be going up." In Purneah the trade in jute and oilseeds has added largely to the ryots' means, while Maldah has especially benefited, though it is to be feared only temporarily, by the higher prices of silk cocoons.

1878.

BHAGULPORE DIVISION.

(*Supplement to the "Calcutta Gazette," September* 18*th*, 1878, *p.* 1005.)

As regards the condition of the people, the information furnished is somewhat meagre, and lacks that vivid appreciation of details in the daily life of the people which might be expected from district officers who knew their districts thoroughly. Prices ruled high throughout the year, and the exceptional prosperity of the agricultural classes formed a striking contrast to the pressure felt by artizans, servants and other persons remunerated by fixed wages. It is satisfactory to find that the agricultural classes are said to have freed themselves extensively from the obligations which they had incurred to the village grain-dealers. The progress effected in the recovery of advances made by Government and the landholders in 1874 appears to show that this statement is correct. The District Officer of Maldah speaks highly of the prosperity of the ryots in his district and cites in support of his opinion the fact that unlawful assemblies and riots which occur in Maldah generally arise out of quarrels between rival and landlords, and not from the disputes between landlords and tenants, which are so common in Eastern Bengal. On the whole, the Commissioner is of opinion that, apart from any particular circumstances which might affect the condition of the people at any particular time, they slowly advance, year by year, in wealth and intelligence, and are happy and contented. One fact is quite certain,—the people are at the present moment able to live without any signs of distress, though the price of rice is what was a few years ago held to be the famine standard of price.

---

* Mr. Mackenzie

1879.

Bhagulpore Division.

(*Supplement to the "Calcutta Gazette," September 10th*, 1879, *p.* 1054.)

Opinion is unanimous that good crops and high prices combined to increase very materially the prosperity of the cultivating classes during the year. On the other hand, it cannot be doubted that the pressure of high prices told severely on people with fixed incomes, and the classes which have to rely mainly or entirely on labour for their subsistence. In the districts of Purneah and Maldah, however, where their numbers are limited, the labouring classes derived some compensation from a rise in wages, and appear to have tided over the difficulties of the year without much hardship. The general condition of the people in these districts is very favourably spoken of by the district officers. In Purneah the most prosperous part of the population is found in the Kishengunge sub-division. The inhabitants of the northern portion of the Arrareah sub-division, and the *Goallas* and Brahmins of pergunnah Dhurmpore, are also said to enjoy a considerable degree of prosperity. In Maldah, where the great mass of the population is engaged in cultivation, the full advantage of the high prices of produce was enjoyed. In Bhagulpore the labouring classes suffered from the high price of food, and though there was some increase in the rates of wages, the labourers had to stint themselves to some extent in their consumption of food. There was, however, no actual starvation. At Singhessur fair several elephants were purchased by persons of this class, and one ryot is known to have bought up the estate in which his original holding was situated.

1876.

Chittagong Division.

(*Supplement to the "Calcutta Gazette," September 13th*, 1876, *p.* 991.)

It is very satisfactory to observe that, notwithstanding these untoward circumstances, there was no complaint of distress from any part of the country.

The people are described as being in a solvent and substantial position. Every man has either direct or indirect interests in land, and a fertile soil and high wages, both at home and in the neighbouring labour markets of British Burmah, render the condition of the cultivators and the lower orders of the people easy and prosperous. It is a custom with the agriculturists to store up two or three years' supply of food for their own maintenance before selling any portion of their harvests; and they have resources other than rice crops, such as the sale of betel-nuts and cocoanuts from the trees around their homesteads, which provide them with sufficient means for ordinary expenses.

1877.

Chittagong Division.

(*Supplement to the "Calcutta Gazette," October 3rd*, 1877, *p.* 1041.)

The parts of the division most injured were unfortunately those which, in ordinary seasons, produce the largest crops, and the effect on the food supply was disastrous, especially in Chittagong, which produces generally little more than suffices for its own wants, and which was already suffering from a bad season in the year preceding. Notwithstanding all, however, such has been the general prosperity of the people of late years, that even in Chittagong they have been able to hold out without Government interference. Prices have been no doubt remarkably high, rising at times in isolated tracts to famine rates, but even the lower orders have not been driven to extremity, and things are fast returning to their normal condition. The cultivators were at the date of the report looking forward with confidence to a good harvest, which, however, the recent very heavy rainfall has somewhat spoilt.

One very good test of the condition of the lower classes lies in the rate of wages, and both in Chittagong and Noakholly these are said to be very high.

In Chittagong this is no doubt due to the fact that nearly every one has some interest in land, while in the south of that district a man can earn from 8 to 12 annas a day by crossing over to Arracan and working at transplanting or reaping rice.

1878.

Chittagong Division.

(*Supplement to the "Calcutta Gazette," October 2nd*, 1878, *p.* 1113.)

It was remarked in the Resolution on last year's report that the fact of the people having tided over the distress following on the cyclone, without any assistance from Government, was of itself striking evidence of their generally prosperous condition. In the tracts actually devastated by the cyclone, there was some decrease in cultivation owing to the difficulty of obtaining seed grain, and partly also from the idea that the salt-water had destroyed the fertility of the soil. The high prices of food must have pressed severely on the lower classes, but the cultivators in general have made few complaints. There have also been some complaints of the pressure of recent taxation—the Road Cess, Public Works Cess, and License Tax, all having come into operation in Chittagong about the same time; but the grumbling appears to have proceeded for the most part from the zemindars. Great difficulty has been experienced in getting labourers for road and embankment works, while there has been only a slight falling off in the institution of criminal charges, which is the favourite, though somewhat costly, amusement of the Chittagong ryot. On the whole, there is no reason to believe that the material condition of the people in the greater part of the district was worse than in other parts of Bengal. No doubt the people suffered from the effects of high prices, the more because Chittagong is an importing district. In the part affected by the cyclone there was certainly much distress felt. But after another good harvest the condition of the district will, it may be hoped, be entirely satisfactory.

1879.

Chittagong Division.

(*Supplement to the "Calcutta Gazette."*)

The material condition of the people is reported to be generally prosperous. Except in a few small tracts, the people have entirely recovered from the effects of the cyclone of 1876. The Commissioner thus describes their condition :—"Indeed, the homestead of a Chittagong or Noakholly peasant is a picture of rural comfort and prosperity. The people everywhere are well clad, the local markets are well attended, and though there is still some difficulty in realizing Government dues, this arises not from inability, but from unwillingness to pay. There is apparently plenty of money for the favourite pursuit of litigation in the Civil Courts."

1876.

Dacca Division.

(*Supplement to the "Calcutta Gazette," September 20th*, 1876, *p.* 1017.)

The material condition of the people is reported to be one of steady improvement. Mr. Lyall, the Magistrate of Dacca, writes :—"The condition of the ryots is excellent ; they pay low wages, and are getting high prices for rice, as well as for their other crops ; very nearly the whole of the benefit of the rise in price caused by the famine year is enjoyed by them, and the ryots of this part of Bengal are decidedly prosperous." In Furreedpore the people are not quite so well off as they are in Dacca. In Backergunge many of the ryots are said to be in debt, but "that they are so," writes Mr. Peacock, the Commissioner, "is entirely their own fault ; with a soil of such wonderful fertility that it is by no means unusual for a single acre of land just touched by the ploughshare to yield 30 maunds of paddy, with a system of rivers and khals and channels that enable them either to sell the produce of their land to traders within a few yards off where it is grown or to transport it themselves to the nearest market, and lastly, living in a district which, by reason of its wonderful water system, is almost independent of the rainfall, and where consequently a failure of crops is almost an impossibility, and a bad harvest of the rarest occurrence ; the ryot of Backergunge if he is not well to do, has only himself to thank." The Lieutenant-Governor, however, trusts that in fact the indebtedness of the Backergunge peasantry is not so widespread as is stated ; no doubt the system of advances is common, but it is believed that the debts incurred are rapidly paid off, and that the ryots, as a community, are far less involved in Backergunge than they are in less favoured districts nearer Calcutta. In Tipperah it is certain that the people are very well off.

1877.

Dacca Division.

(*Supplement to the "Calcutta Gazette," September 26th*, 1877, *p.* 980.)

Generally, Mr. Peacock holds, there can be no doubt that the material condition of the agricultural portion of the population is one of great and increasing prosperity, and, as a consequence, of rapidly advancing independence. The growth of the jute cultivation is assigned as the chief cause of this. The Magistrate of Dacca states that the amount of jute grown in that district alone and sold at Naraingunge, put a sum into the ryots' hands enough to pay the whole rental of the district and leave a surplus over of 8 to 13 lakhs. A similar state of things is found in Furreedpore, Mymensingh and Tipperah. "The style of living of the peasantry has quite changed. They are well-housed, well-fed, and well-clothed ; their women and children wear ornaments ; their utensils are of metal instead of, as formerly, earthenware ; they sleep on platforms instead of mats, and are covered with quilts well stuffed with cotton in place of the rags of cloth that in former years sufficed for the purpose." It is said that the professional and petty trading classes have not shared in this prosperity and felt the higher prices of necessaries. They will probably, however, be able in time to raise the rate of their own remuneration.

1878.

Dacca Division.

(*Supplement to the "Calcutta Gazette," September 25th*, 1878, *p.* 1049-50.)

The year was to the cultivating classes, who in Eastern Bengal form the bulk of the people, a season of extraordinary prosperity. They had good crops both of rice and jute, and realized extremely high prices. The non-agricultural classes and the small landlords may have suffered to some extent (for with the rise in the price of rice all other articles of food went up), but the fact that they have been able to stand such a dear market so long proves that they too are not without resources. The enormous amount of money which has been poured into the country for the purchase of grain must indeed have percolated through nearly all grades of society in one way or other. The district of Furreedpore was perhaps the worst off, the crop there having been rather short, but even here the Collector describes the people as fairly prosperous, well clothed and well housed. The Mahomedan Sub-Divisional Officer at Kishoregunge points to the improved houses, better clothes and richer jewellery, but especially the greater number of wives of the peasantry as incontestible proofs of their material well-being. In Dukhin Shabazpore, devastated as it was by the cyclone and storm-wave, the people were able to support themselves by the sale of their ornaments until the crop was ripe ; and from the time that the early rice began to be cut in August 1877, they continued steadily to improve. Mr. Gupta, the Assistant Magistrate in charge of Perozepore, himself a native of Bengal, shows that, but for his recklessness and prodigality in times of plenty, the Backergunge ryot would be even better off than he is. In proof of this he refers to the increase in the number of fairs held in the ryots' idle season between January and May. "At these fairs" (he says) "everything that can be wanted, either as a necessity or a luxury, can be found, from earthen pots to Keating's cough lozenges. The ryots spend a lot of money on useless things, instead of laying it up for a rainy day; but in spite of this and similar extravagances, it is clear they have laid by enough to keep them for some months after the great calamity of 1876, and I do not know that much more can be expected. They live in great comfort in

homesteads of four to five bigahs, surrounded by a moat and ridge, the only approach to which is a raised road leading to the river, lined on both side by cocoanut, date and other fruit trees; they have an outer house where the ryot transacts his business, receives visitors, and puts up his guests for the night, and as many inner houses as the wants of his family require, the whole being surrounded by a thick plantation of betel and cocoanut trees, which not only gives seclusion, but is also a source of great profit, so much so that many families support themselves on the produce of their homestead gardens."

1876.

Presidency Division.

(*Supplement to the "Calcutta Gazette," September 20th*, 1876, *p.* 1013.)

It is said that, owing to the favourable circumstances of the season, the material condition of the people is slowly and steadily improving, and that the past year has shown a fair degree of progress. Mr. Smith, the Magistrate of Jessore, makes the following remarks regarding the material condition of the people of his district :—

"Increased resort to our schools shows that education is advancing. Increases under the different heads of revenue show increasing wealth among the people. Increasing resort to our courts of justice shows a growing knowledge of individual rights and the means of asserting and defending them. The rapid development of registration, and particularly of voluntary registration, shows an increasing want of greater security, in respect of the title-deeds of property, and of good faith in commercial dealings; while the numerous calls for the construction and maintenance of roads show a growing necessity for improved means of social and commercial communications. On every side there are marks of moral and material progress."

"The largest and most important portion of the population is the cultivating class, in whose material comfort and social position there has lately been a marked improvement. The price of rice has risen, or perhaps it would be more correct to say that the value of silver has fallen, and while the ryot gets a better return for his crops, his rent has not risen in proportion. The general rise of prices does not very materially affect him ; for so long as he has rice to support himself and his family, he does not much want anything else. The little garden attached to the compound of his house supplies him with vegetables, and the nearest river or pond yield him fish." In the Jessore district, however, it must be remembered that the people are generally better off than they are in other metropolitan districts. In the neighbouring district of Nuddea, for instance, there is no doubt that a widespread indebtedness prevails among the peasantry. In Moorshedabad, also, the prosperity of the people is far less marked than it is in the Eastern and Deltaic districts of Bengal.

1877.

Presidency Division.

(*Supplement to the "Calcutta Gazette," September 19th*, 1877, *p.* 934.)

The Magistrates of 24-Pergunnahs, Nuddea, and Jessore concur in testifying to a general improvement in the material condition of the lower classes. Mr. Smith, who has had long experience of Jessore, declares that he sees a gradual and steady improvement. "The peasantry are now better fed, better clothed, and better housed than they were ten years ago. Almost every ryot now bears a cloth umbrella and a carpet bag,—articles which were formerly considered as luxuries for people in the higher grades of life." Mr. Stevens of Nuddea thinks that, while the lower classes are improving, the overstocking of the professions and of Government service has affected injuriously the status of the better classes, and believes that in many families there is really a struggle for subsistence. The Lieutenant-Governor fears that there is much truth in this. The undue attention paid to the teaching of very bad English in our middle class schools, and the natural tendencies of all Bengalees of the writer and higher classes to despise manual labour, have no doubt tended to create a large class of discontented, half-educated men who cannot find work, but are not, as Mr. Stevens says, ashamed to beg from their wealthier relatives. The evil must to a great extent work its own cure. As the idlers increase, they will eventually be driven to work ; and the difficulty of finding work may in time have the effect of postponing marriage and effecting other great social reforms. There are symptoms that the time is approaching when these classes will take to mechanical pursuits. Any disposition of this sort will be encouraged by Government, and when a real demand exists for teaching of a practical kind it will be given.

1878.

Presidency Division.

(*Supplement to the "Calcutta Gazette," October 2nd*, 1878, *p.* 1109.)

The year was of progress and increased prosperity, especially in regard to the lower classes, whether ryots or artizans. The latter are able apparently in districts near the Presidency to share in the growing prosperity and gains of the former. The best proof of the generally improved condition of all classes is as Mr. Peacock remarks, the way in which they have stood the high prices of the passed year,—prices actually higher than those assumed in 1874 as famine rates. Moorshedabad is, perhaps, the most backward district in the division, but even here, as elsewhere, the ryot is in a much more independent and well-to-do condition than could have been hoped for 20 years ago. He is everywhere, however, reckless and improvident, ready to sell off all his grains while prices are high, and to squander the proceeds, and never getting out of debt to his mahajun and zemindar. There is a general agreement among the district officers as to the depressed condition of the middle classes on moderate incomes. "Too proud" (writes one officer) to soil their respectable hands with manual labour, but not too proud to live a life of dependence on others, their field of occupation remains limited in extent, while their numbers increase. What their future will be if is difficult to foresee ; but even now their existence is so precarious that they feel the pressure of high prices of food more than their humble, but more useful, brethern." The Commissioner hopes that these classes are beginning themselves to recognize their own position, and to turn their attention to trades and other means of earning a livelihood opposed to their traditions of caste and family.

1879.

Presidency Division.

(*Supplement to the "Calcutta Gazette," August 13th*, 1879, *p.* 872.)

The Commissioner repeats under this head what had been often said in former reports. There is, he remarks, a general concensus of opinion that the condition of the agricultural classes, who form the majority of the population, has much improved within the present generation; but the trading classes have shared in this progress; that labouring classes also are better off than their ancestors. People of the middle class, commonly called *Bhodrolok*, have, however, suffered from rising prices, and the difficulty of finding suitable employment. The zemindars are also, Mr. Peacock thinks, not so well off as is supposed. Extravagance and sub-division of property have led them into difficulties which are now aggravated by the growing independence of the ryot class.

1876.

Rajshahye Division.

(*Supplement to the "Calcutta Gazette," August 30th*, 1876, *p.* 952.)

The material condition of the people is described as being generally prosperous and progressive. The advances of grain made during the famine have been almost entirely recovered in Bogra: in Dinagepore and in parts of Rungpore, where the people are poorer, and the harvests of the year were less plentiful, the recovery of the advances has been less steady and rapid. It is pointed out that in Rajshahye the rearers of the silk-worms, who have to pay high rates of rent for the land in which they grow mulberry, are suffering from the continued depression in the silk trade. On the whole, however, the people of this division may be said to be well off as compared with some parts of Bengal. The country is not over-populated, and there is no necessity for emigration. In some districts, like Dinagepore, Julpigoree and Darjeeling there is waste land available for cultivation. The soil is fertile, as well in the production of food-grains as in jute, sugarcane, tobacco, and other staples, which are largely exported into other districts and to Calcutta. It is said that the price of rice during the year was above the average, and that it has not yet returned to what it was prior to the scarcity of 1873-74. The Lieutenant-Governor considers that this result is rather attributable to the uncertain prospects of the harvest than to the late fall in the value of silver, as is suggested by one officer. The depreciation of silver has not at present, so far as the Lieutenant-Governor is aware, affected the prices of food, or of other necessaries of life in the interior of Bengal.

1877.

Rajshahye Division.

(*Supplement to the "Calcutta Gazette," September 19th*, 1877, *p.* 939.)

The reports of the District Officers confirm the fact already noticed by the Lieutenant-Governor, that a marked amelioration in the material condition of the people is to be observed in most of the districts of Bengal. The effects of the famine have, in this division, already passed away. Good harvests and high prices have enabled the ryots to pay up their arrears of rent and of famine advances, and the only fear now is that the improved condition of the peasantry, and their consequent independence, may make them act unfairly towards their landlords.

1878.

Rajshahye Division.

(*Supplement to the "Calcutta Gazette," September 25th*, 1875, *p.* 1055.)

Notwithstanding their sufferings from fever and other maladies, the agricultural classes of this division are now extremely prosperous, and even the districts in which the crops were a little short got more than an ordinary money return, owing to the brisk demand for export to the south. The non-agricultural classes, specially the petty shop-keepers and men on fixed salaries, suffered from the rise in prices, but the artizans and those who work for wages were able to push up their rates of remuneration, which have indeed always in most parts of this division been tolerably high.

1879.

Rajshahye Division.

(*Supplement to the "Calcutta Gazette," September 24th*, 1879, *p.* 1113-14.)

The high prices of food grains which ruled during the year have in this division, as elsewhere in Bengal, brought a large measure of prosperity to the labouring classes. In Dinagepore the ryots are said to have quite freed themselves from debt, and to be working on their own capital. In Bogra, some pressure was left in the inundated tracts, but in other parts of the district the general condition of the people was every good. The labourers and people engaged in service, on whom high prices naturally tell with most severity, are not numerous in the division.

1876.

Burdwan Division.

(Supplement to the "Calcutta Gazette," October 18th, 1876, p. 1100.)

It is remarked by the Commissioner that the relief which the plentiful harvest of 1875 brought the cultivators was to some extent counterbalanced by the low prices they got for their crops, and the Lieutenant-Governor sees that Sir William Herschel, of Hooghly, the only Collector who has adverted to the subject, does not fail to note that the depreciation of silver has had no depreciable effect, up to the middle of August, on the prices of food and labour in that district. This statement corroborates the observations that had been made in other parts of Bengal; but it is a circumstance calculated to excite some surprise that there should have been no rise in prices in a metropolitan district like Hooghly, which is more than ordinarily affected by Calcutta influences. The Lieutenant-Governor is struck also by the following remarks, recorded by the same Collector, regarding the material condition of the people:—"I see," writes Sir W. Herschel, "no general mark of the material improvement in the condition that the people enjoyed 20 years ago; the number of good houses and of pucca buildings has, however, increased among, and more clothes are worn by, all classes above the labourer or agriculturist. Well fed cattle are more common, but starved ones decidedly more scarce than they used to be. Milk is so valuable now that calves have very little chance of growing; grazing lands are few, and the Cattle Trespass Law is strong." The truth is that Hooghly, more than 24-Pergunnahs even, or any other district, has become, as it were, the Suburban Settlement of Calcutta, and that the densely populated villages all along the banks of the river for more than 20 miles north of Howrah are peopled with a well-to-do metropolitan population, who are increasing in comfort and prosperity; while further in the interior the increase in population and in the demand for food has put pressure on the cultivators, who have been gradually compelled to place even the worst soil under the plough, and are, as was clearly shown in the recent enquiries that were made, far inferior in material condition and prospects of improvement to the ryots of the eastern and north eastern districts of these provinces. In parts of the Burdwan Division, such as Midnapore, people have been in a very depressed condition, owing to the effects of the fever and to successive calamities of drought, inundation, and cyclones, but they have been fortunately much relieved by the good harvest of the past year.

1877.

Burdwan Division.

(Supplement to the "Calcutta Gazette," November 28th, 1877, p. 1290.)

To the cultivators generally the year was one of remarkable prosperity. The full crops, attended with high prices owing to scarcity in Madras, enabled them to pay off most of their debts and to satisfy the demands of their landlords. In Burdwan the grain advances made during the famine of 1874, amounting to Rs. 2,35,000, have been all repaid save Rs. 10,000. Even in the tracts which suffered from inundation, the ryots made such profits from mulberry as almost made up for any losses on rice.

1878.

Burdwan Division.

(Supplement to the "Calcutta Gazette," October 2nd, 1878, p. 1127.)

The material condition of the people was good. The outturn of the crop was fair, and this, added to the large harvest of 1876-77, enabled the agriculturists to profit to the full by the high prices that ruled owing to the great demand for export to Madras and Bombay. In most of the districts the labouring classes were able also to share in the prosperity and secure a rise in wages.

1879.

Burdwan Division.

(Supplement to the "Calcutta Gazette," September 24th, 1879, p. 1107.)

There is unanimous testimony to the prosperity of the people, the result of good harvests, high prices, and a liberal demand for labour. Mr. Ravenshaw says that, returning to Western Bengal after a long absence, and coming from a province still so backward as Orissa, he was struck with the marvellous advance in wealth and comfort which has occurred in the interval.

The Resolution of Government on the reports of the Divisional Commissioners were discontinued in the *Gazette* in 1880 and 1881. Extracts are therefore given from the Administration Report.

1880.

(From the Administration Report of Bengal for 1880-81.)

With the exception of two or three districts, in which only an average rice crop was obtained, the principal harvests of the year were exceptionally good, and the result was a great fall in the prices of food-grains throughout the province. In most of the districts of Eastern Bengal the crops were the best that have been obtained for many years past. In nearly every division there were districts which yielded bumper crops, and in parts of the Serajgunge sub-division the early rice crop was so heavy that a portion of it is reported to have been lost for want of labour at reaping time. The non-agricultural population, and most of all the labouring classes, benefited from the abundant crops and low prices; and although in many districts the cultivators were dissatisfied with the prices they obtained for their crops, there is no doubt that they, too, generally gained more by the abundance of the harvest than they lost by the fall in prices. Even in Orissa, where

certain amount of local damage was caused by floods, the year was an exceptionally favourable one, and there was a marked improvement in the material condition of the people. The trade statistics show a demand for comforts and luxuries previously unknown. In both Bhagulpore and Chota Nagpore the satisfactory condition of the people was accompanied by a great decline in the number of emigrants recruited for the tea districts of Assam and Cachar. From the Bhagulpore Division the number of emigrants was 1,227 as compared with 1,729 in 1879-80, and 3,267 in 1878-79. From the Chota Nagpore Division, the number was 5,167 against 13,815 and 25,614 in 1879-80 and 1878-79. In Behar, as in the rest of Bengal, the low prices and good harvests of the year had a marked effect on the condition of the people, the improvement extending to both the ryots and the landless labouring classes; the local reports from each district in the division give a satisfactory record of progress. There was no marked change in the price of labour in any part of the province.

1881.

(*From the Administration Report of Bengal for* 1881-82.)

The harvests of the year, though deficient in some tracts, gave a good outturn for the entire province the addition of which to the large stocks already accumulated, from the excellent crops of the previous year, caused a further decline in the price of grain and a further improvement in the general condition of the people. The increased prosperity of the year was, however, more largely enjoyed by the labouring classes and people with fixed income than the agriculturists. In several districts the latter complained of the difficulty which they experienced in disposing of their produce and in paying their rents from the prices realized. This doubtless proved a source of considerable inconvenience to many of the landlords also. The stagnant state of the market was partly attributable in some cases to want of easy communication with large centres of trade; but this drawback will be removed by the expansion of the railway system, which is now being rapidly pushed on. In the district of Tipperah the ryots appear to have realized the advisability of contracting the rice supply in the present condition of the market, and have already diverted some of their lands hitherto grown with rice to the cultivation of jute. Patna was apparently the least favoured of all the divisions during the past year, the general result of the harvests having, it is reported, been less satisfactory than in the two preceding years. Prices, however, continued very low, and there was an improvement in the material condition of the people in some of the districts, while in the rest the prosperity attained in recent years was fully maintained. In the Chota Nagpore Division the good harvests of the past two seasons are said to have led in most parts to the adoption of a higher standard of comfort. Reduced emigration, a good excise revenue, and a moderate demand for copper coins, are cited as sure proof of the satisfactory condition of the *Kol* population. No advance was observed in the wages of labourers during the year, except in Chittagong, where they took advantage of the abundance of food to hold out for higher remuneration.

No. 152—38LR, dated Calcutta, the 15th January 1884.

From—C. W. Bolton, Esq., Under-Secretary to the Government of Bengal, Revenue Department,

To—The Secretary to the Government of India, Legislative Department.

I am directed by the Lieutenant-Governor to acknowledge the receipt of your letter No. 1536, dated 12th ultimo, forwarding, for the opinion of this Government, the memorial on the Bengal Tenancy Bill, which the Central Committee of Landholders of Bengal and Behar have addressed to the Secretary of State. In reply, I am to submit a Memorandum which, at the Lieutenant-Governor's desire, has been prepared by Mr. MacDonnell, Officiating Revenue Secretary to this Government, and in which the various objections to the measure raised in the memorial are fully answered. As the memorandum has the Lieutenant-Governor's entire concurrence, I am to request that it may be taken as expressing the views of the Bengal Government on the matters discussed in it.

2. With reference to the questions raised in the memorial as to the *status* of zemindars and ryots at the time of the Permanent Settlement, I am to say that, in the Lieutenant-Governor's opinion, they are now more of antiquarian than of practical value. Throughout the discussions in connection with the Bengal Tenancy Bill, Mr. Rivers Thompson has always maintained the inutility of re-opening questions which were thoroughly discussed and settled many years ago. It seems to him, for instance, unreasonable to go back to the last century for information in regard to the capacity of ryots to acquire rights of occupancy when Act X of 1859 furnishes all the information that is wanted. The provisions of that Act recognize the ryot's capacity to acquire occupancy rights *in any lands*, and to hold that land as long as he pays a fair rent for it. The provisions of the present Tenancy Bill, modified as the Lieutenant-Governor trusts they may be, start from the basis secured by Act X of 1859, and they will make no inconsistent addition thereto, nor any addition which is not called for by the experience of the last 20 years, and by the present condition of these Provinces.

MEMORANDUM ON THE MEMORIAL ADDRESSED TO THE SECRETARY OF STATE BY THE CENTRAL COMMITTEE OF THE LANDHOLDERS OF BENGAL AND BEHAR ON THE SUBJECT OF THE BENGAL TENANCY BILL.

The memorial, dated 17th November 1883, which the Central Committee of the Landholders of Bengal and Behar have addressed to the Secretary of State, has been forwarded by the Government of India (Legislative Department) to the Bengal Government for an expression of such opinion as it may be desirable to offer upon it. His Honor the Lieutenant-Governor has accordingly desired me to examine and report upon the memorial, and in compliance with His Honor's wishes I beg to submit the following memorandum.

Introductory.

2. Having carefully examined the memorial, I find in it no statement of importance which has not been discussed at one stage or another of the controversies which have during the last few years passed upon the rent question, nor any serious attempt to meet the arguments which have been from time to time put forth by the Government of Bengal in support of the proposed legislation. The memorial is, in fact, a series of repetitions of statements which have been frequently refuted, and of misconceptions which have been already fully explained away. For my own part, I am disposed to look on the submission of such a memorial as this with regret because, after all that has been written and said on this subject, I had entertained some hope that the zemindars of Bengal and Behar would adopt a more helpful attitude; and would, instead of reiterating unfounded claims, choose rather to assist the Legislature in moulding into fitting shape a project of law which, long called for by the necessities of the Province, was at all events, at the outset, undertaken at their own repeated solicitations. As, however, the memorialists have not choosen to adopt a helpful attitude on this question, I can hardly hope to say anything which will modify the views they profess to entertain, and therefore my remarks shall be as brief as the wide range of the subject will permit.

Heads of subjects dealt with in the memorial.

3. For the purposes of this memorandum, the memorial may be divided into four parts. The first part (paragraphs 1 to 25) is in the nature of an historical disquisition on the relative position of the State, the zemindar and the ryot in pre-settlement times. The second part (paragraphs 26 to 56) deals with some of the main features of the Bill now before the Legislature. Part three (paragraphs 57 to 71) is concerned with showing that no necessity exists for any legislation at all on the subject of the law of landlord and tenant in Bengal. Finally, in part four it is maintained that the weight of official opinion is against the Bill. In the following observations I shall deal with each of these portions in succession.

Status of zemindar before the Permanent Settlement. Claims to a proprietary status denied.

4. The first part of the memorial claims for the zemindars a full proprietary right, in the English sense of the term, in the soil of their estates, from times anterior not only to British, but even to Mahomedan rule; and this claim is supported by references to the discussions which preceded the Permanent Settlement, and by an appeal to the terms of that Settlement itself. In the letter, dated 27th September last, which this Government addressed to the Viceroy in Council on the subject of the Tenancy Bill, the question of the *status* of zemindars before the Permanent Settlement was referred to only incidentally. The Lieutenant-Governor then thought that, while it was well, in such a great question as an amendment of the Rent law in Bengal, to have history on one's side, yet the decision of the question turned more on appeals to the requirements of the present and to needs of the future than on historical researches. He therefore paid more attention to the practical character and necessity of the proposals made in the Bill than to their historical justification, being satisfied that he could not materially increase the weight of evidence which had been already advanced on the latter aspect of the question. To the antiquarian aspect of the question nevertheless great prominence is given in this memorial, and a case is sought to be made out against the Government by combining into an indictment fragments of history, ill-remembered, with fragments of law, ill-understood. Such erroneous representations must not be allowed to pass uncontradicted, however loath I may be to spend time on a discussion which I feel must be barren of practical good. On this part of the subject, however, it will not be necessary to follow the memorialists at very great length.

I am aware that, from the discussions which preceded the permanent settlement of 1793, passages may be cited to support the claim of absolute proprietary right for which the zemindars now contend; but as the discussions were not one-sided, it would be easy to add to the many passages of equal authority which, during the present controversy, have been adduced to establish the contrary position. That, however, would be a tedious course to adopt, and I therefore limit myself to pointing out very briefly the intrinsic weakness of the memorialists' case on this part of the argument. The first point which the memorialists seek to make is based upon a declaration, made by some native officials whom Mr. Shore consulted, that "the rents belong to the sovereign and the land to the zemindars." From these words the conclusion is drawn that the predecessors of the zemindars of to-day were owners of the land. That conclusion, however, is fallacious; for authorities maintain that by "zemindars" in that context is meant the *actual cultivators* of the soil (*arbab-i-zamin*). "The truth is," says the famous Hanifah lawyer Abu Mahomad Saraksi (Shams-ul-Aïmmah), "that between the sovereign and the *rubb-ul-arz*, who is properly the cultivator, no one intervenes who is not a servant of the sovereign." When, again, the memorialists infer the zemindars' proprietary rights in the soil from the assertion that the Emperors of Delhi purchased from zemindars lands required for public purposes, I make the objection, in the first place, that, on the very authority they quote, the fact of such purchases is uncertain; while, in the second place, granting the fact, the inference is not justifiable. "A zemindar is a payer of revenue," postulates the document on which the inference is based; and the true inference from that postulate is that, if zemindars were recompensed for lands acquired for forts or mosques, such recompense must be regarded, not as compensation for the land itself, but for the zemindars' share of the revenue collections from that land. When, further, the memorial cites, from among the charges on which Mr. Hastings was impeached, that charge which referred to "letting the lands of Bengal in farm, thereby destroying all rights of property of the zemindars,"

Irrelevancy of argument based on impeachment of Mr. Hastings and on the 3, Geo. III, chapter 26.

the obvious answer is that the charge, which was an outcome of the party politics of the times, was negatived by the House of Lords, and that the practice of dispossessing recusant proprietors, and letting their estates in farm, which seemed so obnoxious to Mr. Burke, is legal and customary to the present day, as our settlement proceedings abundantly prove. Finally, when the memorialists refer to the 39th section of the "Act for the better Regulation and Management of the affairs of the East India Company" (24, Geo. III, chapter 25) as containing an acknowledgment of the proprietary rights of the zemindars, it is merely necessary to quote the words* of the section in order to demonstrate that the Statute in question, far from containing any such acknowledgment, merely directs an enquiry into, and a redress of, such grievances as might be found to exist in connection with land matters in Bengal.

* "And whereas complaints have prevailed that divers Rajahs, zemindars, polygars, talukdars, and other native landholders within the British territories in India have been unjustly deprived of or compelled to abandon and relinquish their respective lands, jurisdictions, rights, and privileges, or that the tributes, rents, and services required to be by them paid or performed for their respective possessions to the said United Company, are become grievous and oppressive; and whereas the principles of justice and the honour of this country require that such complaints should be forthwith enquired into, and fully investigated, and, if founded on truth, effectually redressed: Be it therefore enacted that the Court of Directors of the said United Company shall, and they are hereby accordingly required forthwith to take the said matters into their serious consideration, and to adopt, take, and pursue such methods for *enquiring* into the causes, foundation, and truth of such complaints, and for obtaining a full and perfect knowledge of the same and of all circumstances relating thereto, as the said Court of Directors shall think best adapted for the purpose. And thereupon, according to the circumstances of the respective cases of the said Rajahs, zemindars, polygars, talukdars, and other native landholders, to give orders and instructions to the several Governments and Presidencies in India for effectually redressing, in such manner as shall be consistent with justice and the laws and customs of the country, all injuries and wrongs which the said Rajahs, zemindars, polygars, talukdars, and other native landholders *may have sustained unjustly* in the manner aforesaid, and for settling and establishing upon principles of moderation and justice, *according to the Laws and Constitution of India*, the permanent rules by which their respective tributes, rents, and services shall be in future rendered and paid to the said United Company by the said Rajahs, zemindars, polygars, talukdars, and other native landholders."

5. But the position for which the Government contends on this part of the question must not be allowed to rest on a mere exposure of errors of this sort. It may therefore be well to state that the memorialists, if misled as to the substance of the Statute of George III, should, at all events, have considered that an acknowledgment of the proprietary rights of the zemindars in such a Statute was antecedently improbable. It is well known that among the powers conferred on the East India Company by the Imperial Sunnud granting the Dewani, was the power of removing zemindars from the management of their zemindaris (Colebrooke Digest, vol. iii, p. 190). In exercise of that power, and with a view to ascertain speedily the true assets of the various zemindaris, recourse was had to the farming system in the early days of British rule. The management of zemindaris was in fact put up to sale and knocked down to the highest bidder. When the highest bidder happened not to be the person in whose family the office of Collector of the Revenue had become hereditary (*i.e.*, the zemindar), provision was not always made for the payment of maintenance to the latter. This was undoubtedly a grievance; for the holder of the hereditary office of zemindar or Revenue Collector was entitled to an allowance if relieved of the performance of his hereditary functions; therefore when ousted under the farming system without provision being always made for their maintenance, zemindars complained of the hardships to which they were thus exposed. They petitioned the Government for redress, claiming payment of their allowances; but in their petition, which is printed on page 42 of the papers on the Permanent Settlement, they *never once claim any proprietary right in the soil.* They contended only for pecuniary allowances when dispossessed of the management of their zemindaris.

Zemindars in their petition against farming settlements never claim proprietary status.

But apart from the fact that the zemindars before the Permanent Settlement themselves never claimed proprietary rights, there is another important circumstance which should also have suggested to the memorialists doubts as to the correctness of the views they have put forward on this question. When the Statute of George III, which became law in 1784, reached India, enquiries as to the grievances referred to in that Statute, and as to the nature of the rights of zemindars and ryots, to which I shall refer more particularly later on, were set on foot. Had, therefore, an Act of Parliament, passed in 1784, affirmed a right which even the zemindars themselves had never asserted, we should not find the Committee of Revenue, two years later in 1786, thus defining the character of the zemindari tenure as it then existed :—

"It remains to answer the last enquiry * * * on the nature of the zemindars' rights. A true knowledge of these is not, we humbly conceive, of very difficult attainment, yet the discussion has employed for years past the first talents both in India and in Europe. A sober appeal to the facts will sometimes convince when the most powerful eloquence shall have failed to pursuade. In this hope it is that we now presume to call your attention to the instrument hereinbefore mentioned (the *sunnud*), upon the tenor and terms of which all right and privilege of the zemindar must unquestionably depend. From this it is evident that the office is conditional, that it is renewable annually and revocable on defalcation. It is evident that, though invested with the management of a certain proportion of the collections, yet he (the zemindar) is expressly restrained from alienation of any land, the enhancement of any rates or rents, and the imposition of any new taxes, these being rights inherent in and specially reserved to Government. From the further inspection of a zemindari sunnud it will appear that, so far from any property being supposed or understood as conveyed to a zemindar by this his instrument of law investiture, the lands he occupies in virtue of it are not even considered or admitted as a security for his personal appearance, since, together with the *machalka*, a *hazir zamni* (or bail-for-appearance bond) is demanded or exacted from him." (Harrington's Analysis, vol. III, page 252).

Committee of Revenue's definition of zemindar, 1786.

6. In following the memorialists thus far into the discussions regarding the *status* of the zemindars in pre-settlement times, it was my wish to indicate, first, that the evidence on which the memorialists rely in support of their claim to full proprietary rights was intrinsically weak; and, secondly, that it was no difficult task to rebut it by better evidence. It seems, however, hopeless to expect that any appeal to pre-settlement literature will be accepted as decisive by one side or the other of this controversy; and it is therefore with a feeling of relief that I turn to the Regulations themselves for conclusive proof of the position which this Government has assumed in regard to the ancient status of zemindars and to their existing rights. I have indeed thought it right, in deference to the representations of an influential body of landholders, to follow those representations so far as to indicate the sources of their weakness; but I am now, and always have been, of the opinion that much valuable time would have been saved in these discussions had more attention been paid to the Regulations themselves, and less to the controversies which preceded them. Turning, then, to the Regulation law, I would invite attention to the following passage in the preamble to Regulation II of 1793:—"The property in the soil was never before (*i.e.*, before 1793) formally declared to be vested in the landholders, nor were they allowed to transfer such rights as they did possess, or raise money on the credit of their tenures without the previous sanction of Government. With respect to the public demand upon each estate, it was liable to annual or frequent variation at the discretion of Government. The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the ryots or tenants for each bigha of land in cultivation of which, after deducting the expenses of collection, ten-elevenths were usually considered as the right of the public, and the remainder the share of the landholder. Refusal to pay the sum required of him was followed by his (*i.e.* the zemindar's) removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government; and the above-mentioned share of the landholder, or such sum as special custom or the orders of Government might have fixed, was paid to him by the farmer or from the public treasury."

Status of zemindar in pre-settlement times according to Regulation II, 1793.

This passage expresses the authoritative finding of Lord Cornwallis' Government—not, it will be confessed, an anti-zemindar Government—on the vexed question of the *status* of zemindars before 1793. That finding is embodied in the law, and a little consideration will show how utterly irreconcileable with it are the claims set forth in this memorial by the landholders of Bengal and Behar. The Regulation says that zemindars, before 1793, had never been vested with property in the soil, and that such interests in their zemindaris as they did possess were limited in nature and extent; yet in the 17th paragraph of the memorial, the statement is hazarded that Lord Cornwallis' declaration, vesting the property in the soil in the zemindars, was "a distinct acknowledgment and recognition of *the status which zemindars always had.*" The allegation that the revenue assessed on the zemindars by the Mogul Government was in the nature of a permanent quit-rent is refuted by the declaration that such revenue was liable to annual or frequent variation at the discretion of Government. The statement that the rights of the zemindars in the soil had always been held sacred is answered by the fact that they were frequently removed from the management of their zemindaris. These instances will suffice to show, on the authority of the Regulation, how unsubstantial are the claims now put forward by zemindars to an independent *status* in pre-settlement times, and how unreliable is all the evidence which can be adduced from the pre-settlement discussions in support of such claims. The true position of the zemindar before 1793 is that declared in the preamble to Regulation II, which Mr. Harrington, whose authority the memorialists will not dispute, for they largely appeal to it, thus explains and amplifies: "It is by attempting to assimilate the complicated system which we found in this country with the simple principles of landlord and tenant in our own, and especially in applying to the Indian system terms of appropriate and familiar significance, which do not, without considerable limitation, properly belong to it, that much, if not all, of the perplexity ascribed to the subject has arisen. If by the terms "proprietor of land" and "actual proprietor of the soil" be meant a landholder possessing the full rights of an English landlord or free-holder in fee-simple, with equal liberty to dispose of all the lands forming part of his estate as he may think most for his own advantage, to oust his tenants, whether for life or for a term of years, on the termination of their respective leasehold, and to advance their rents on the expiration of leases at his discretion; such a designation, it may be admitted, is not strictly and correctly applicable to a Bengal zemindar, who does not possess so unlimited a power over the *khudkhast* ryots and other descriptions of under-tenants possessing, as well as himself, certain rights and interests in the land which constitute his zemindari. The zemindar appears to be a landholder of a peculiar description, not definable by any single term in our language. A receiver of the territorial revenue of the estate from the ryots and other under-tenants of land. Allowed to succeed to his zemindari by inheritance, yet in general required to take out a renewal of his title from the sovereign or his representative on payment of a *peshkush*, or fine, on investiture, to the Emperor, and *nazranah*, or present, to his provincial delegate, the *Nazim*. Permitted to transfer his zemindari by sale or gift, yet commonly expected to obtain previous special permission. Privileged to be generally the annual contractor for the public revenue receivable from his zemindari, yet set aside with a limited provision in land or money, whenever it was the pleasure of Government

Mr. Harrington's definition of zemindars' position before the Permanent Settlement.

to collect the rents by separate agency, or to assign them temporarily or permanently by the grant of a *jagheer* or *altamgah*. Authorized in Bengal, since the early part of the present century (the eighteenth of the Christian era), to apportion to the pergunnahs, villages and lesser divisions of land within his zemindari the abwab or cesses imposed by the Soubedar usually in some proportion to the standard assessment of the zemindari established by Todar Mull and others, yet subject to the discretional interference of public authority either to equalize the amount assessed on particular divisions, or to abolish what appeared oppressive to the ryot. Entitled to any contingent emolument proceeding from his contract during the period of his agreement, yet bound by the terms of his tenure to deliver in a faithful account of his receipts. Responsible by the same terms for keeping the peace within his jurisdiction, but apparently allowed to apprehend only and deliver to a Mussulman Magistrate for trial and punishment." (Har. iii, p. 399.)

From this definition of the status of the zemindar, which is in accordance with the letter and spirit of the Regulations, it must surely be obvious to every reasonable person that zemindars had not a proprietary right in the soil before the Permanent Settlement, and that the claims of the memorialists to the possession of such a right are wholly untenable.

Zemindars' claim that ryot's rights were ascertained and settled before Permanent Settlement.

7. In addition to putting forward on behalf of the zemindars this unsustainable claim to a proprietary right in the soil before the Permanent Settlement, the first portion of the memorial also denies the right of Government to interfere, under the Regulations, for the purpose of ascertaining and defining the rights of the ryots. It is asserted that, before the Permanent Settlement was concluded, full enquiries as to ryots' rights had been made, and that the Permanent Settlement Regulations embody all the rights which ryots then possessed. The memorialists do not ignore the express declaration to the contrary intent which the Court of Directors made in 1819; but the effect of the declaration is minimized, and the Permanent Settlement Regulations are appealed to as the ultimate authority on the point.

Consideration of Mr. Shore's views in regard to ryot's claims to fixity of tenure at fair rent, and in regard to the assessment of the revenue.

Without for a moment denying the ultimate authority of the Regulations or declining to join issue in regard to this question on the firm ground which the Regulations furnish, I would, in the first place, invite attention to the following considerations. It is true, as the memorialists state, that the Court of Directors, when forwarding the Regulating Statute of 1784 to the Government of Bengal for necessary action, directed an enquiry to be made "into the rights of all descriptions of persons according to the established usuages of the country." These enquiries, which were preliminary to a permanent settlement of the land revenue, resulted, as Mr. Harrington tells us, in voluminous reports from the Collectors, the Board of Revenue, and other public officers; and these reports were summarized and examined by Mr. Shore in his famous minutes of 18th June 1789 for Bengal and of 18th September following for Behar. It is, however, well known to every reader of the Fifth Report and its appendices that the information thus collected was of a general character merely; that it afforded very inadequate information as to the financial resources of the various districts, and that only in a few districts was any attempt made to institute detailed enquiries or to establish a record of rights. The want of precision which characterised the enquiries which had been made, and the information which had been collected, so convinced Mr. Shore of the unwisdom, both in the financial interests of Government and in the interests of the ryots, of basing any permanent arrangements on such information, that all the weight of his great influence was directed towards inducing the Governor-General to conclude a settlement, in the first instance, for ten years only. It was Mr. Shore's hope that during that term these special enquiries and record of facts might be completed which had already been begun in the 24-Perguunahs and other places under the orders of Government,* and not as mere "acts of unauthorized power" on the part of Collectors, as the memorialists in their 34th paragraph incorrectly assert. And in this Mr. Shore's object confessedly was to gain a truer experience of the resources of each district in the interests of the revenue, and a wider knowledge of the relations of zemindars and ryots in the interest of the people. For, as he presciently states, "in forming a judgment from past experience, we may be allowed to entertain very justifiable apprehensions *that from a want of knowing sufficiently existing abuses, we may be under the necessity of correcting them in future by new rules which may affect either the revenues of Government or the stipulations of the zemindars.*" (Second Minute of 18th September 1789; *see* also the Minute of 8th December 1789).

* See Mr. Colebrooke's Minute of 1st May 1812.

Lord Cornwallis, while agreeing with Mr. Shore as to the necessity for protecting the rights of the ryots, differs from him as to means. Ryots' rights consequently not ascertained before the Settlement.

Unfortunately Mr. Shore's prudent counsels did not prevail with the Governor-General, who, in his Minute of 3rd February 1790, declared his belief that the objects which Mr Shore had in view might be secured by speedier means than a detailed and tedious enquiry. It was Lord Cornwallis' opinion that by limiting the Government demand upon the zemindar, and by imposing on him the obligation of coming to terms with his ryots, subject to certain specific rules and restrictions, the purposes of a detailed enquiry in the interest of the ryots would be effectually and expeditiously fulfilled, while the immediate advantages to the revenue derivable from a permanent settlement would at once accrue. The advice of Mr. Shore was therefore rejected, and the settlement was declared permanent without any definite knowledge having been acquired of the resources of each estate, and without any precise record

having been made of the reciprocal relations of zemindar and ryot. Rules, however, were provided in the Settlement Regulation whereby it was believed that those relations would be established on a permanent and satisfactory basis. To these rules I shall presently refer at length; but here I would note that the outcome of Lord Cornwallis' policy has unfortunately justified Mr. Shore's fears rather than the Governor-General's hopes. While we are to-day under the necessity, which Mr. Shore foresaw, "of correcting abuses by new rules," we do not find that the zemindars verify Lord Cornwallis' expectations by welcoming these corrections or by accepting that interference on the part of Government which the Governor-General asserted to be "undoubtedly necessary for effecting an adjustment of the demands of the zemindars upon the ryots." On the contrary, this interference, which was foreseen to be possible, and expressly declared to be justifiable by the authors of the Permanent Settlement themselves, is now resented as an infraction of a solemn engagement by persons who ignore the fact that a chief stipulation in that engagement was the reservation of this very power of interference.

8. The preceding remarks, while indicating the reasons why at the time of the Permanent Settlement it was found necessary to reserve power to interfere between the Zemindars and their ryots, have also furnished a refutation of the assertion made by the memorialists that the rights of ryots had been ascertained and fixed before the conclusion of the Settlement. It now becomes necessary to consider what modifications the Settlement Regulation itself introduced into the mutual relations of the Government and the zemindars on the one hand, and of the zemindars and ryots on the other. The consideration of this question will furnish that answer to the main contention of the memorialists to which the preceding observations have been introductory.

Effect of Permanent Settlement on status of zemindars.

The modifications which the Permanent Settlement introduced into the relations between the Government and the zemindars are specifically set forth in the proclamation dated 22nd March 1793, which was afterwards enacted into Regulation I of the same year. That Proclamation contained two principal provisions: it fixed for ever the jumma which had been assessed on the various estates at the Decennial Settlement which had just been concluded, and it declared the settlement-holders, whom it styled "proprietors of the lands," privileged to transfer "to whomsoever they think proper, by sale, gift or otherwise, their proprietary rights in the whole or any portion of their estates without applying to Government for its sanction to the transfer." There were some subsidiary stipulations, to which it is unnecessary to refer here more specifically; but the intention and effect of the Proclamation was to abandon, on the part of Government, the right to increase the revenue which had been assessed on the estates of the zemindars, and, subject to summary sale for non-payment of that revenue, to constitute them, *as far as the Government was concerned*, owners of these estates. That was all that the Permanent Settlement did, or ever was intended to do. It was the relinquishment in favour of the zemindars, on condition of the punctual payment of a species of quit-rent, of the rights which the Government possessed, but of absolutely nothing more.

Effect of Permanent Settlement on status of ryots.

Now the rights which the Government possessed were admittedly not exhaustive of all the interests in the land. Under the customary law of the country, as admitted by the authors of the Permanent Settlement, the ryots too had rights which it was not discretional with the Government to alter or annul. Those customary rights of the ryots the Permanent Settlement neither did nor could affect or prejudice in any degree whatever (see section 15, Regulation VII, 1799, clauses 7 and 8). The zemindars do not complain that the effect of the proposed rent legislation will be to enhance the revenue for which their estates are liable, nor to fetter the free transfer, by sale, gift or otherwise, of the whole or any portion of their rights. As far as the relations between them and the Government are concerned, there can therefore be no ground for any charge of breach of faith, and there is no allegation of any such breach. The charge is that by interfering between them and their ryots in the matter of rent, the Government of to-day is violating the pledge given in 1793, and in so far is infringing the compact then made with them. Now a very little consideration will show how wholly groundless such a charge as this must be pronounced to be. There was no compact made with the zemindars in 1793 that Government would not intervene between them and their ryots with a view to regulating the latter's rents. On the contrary, the power so to intervene was distinctly reserved by the Court of Directors when conveying their assent to the Permanent Settlement; and it was embodied in Article VII of the Permanent Settlement Proclamation. The reason for this reservation has already been explained. Had the Government of the day thought fit to follow Mr. Shore's advice, and had it abstained from declaring a settlement permanent, which had been framed on confessedly defective and inaccurate information, until the defects had been made good and the inaccuracies rectified, there might have been no need for such a reservation as that contained in Article VII. As it was, however, the reservation was necessary, and I now proceed to indicate how it was acted upon, even by the authors of the Permanent Settlement themselves.

Provisions of Permanent Settlement for securing the rights of ryots

9. The Settlement was declared permanent on the 22nd of March 1793, and on the 1st of May following was enacted Regulation VIII of 1793, in which Lord Cornwallis embodied these safeguards of ryots' interests, which he erroneously believed would have the same effect as the detailed enquiries which his more experienced advisers had urged

him to undertake. The memorialists call that Regulation the Magna Charter of zemindars and ryots alike. I do not dispute the description. I would only qualify it by saying that, if in the case of the zemindar it has been honoured in the observance, in that of the ryot it has been honoured in the breach. How this has come to pass I proceed to show.

The safeguards by which Lord Cornwallis hoped to protect the interests of the ryots throughout these Provinces were those provisions of Regulation VIII which enjoin on zemindars the duty of preparing pottahs and delivering them to their ryots. Inasmuch, however, as complete freedom of contract between zemindar and ryot only meant in those days, as in these, freedom to the stronger to impose any terms he pleased on the weaker, the Permanent Settlement Regulations provided that—

(*a*)—Every zemindar should prepare forms of pottahs or leases conformable to the Regulations and adapted to the cirumstances of his estate (*i.e.*, showing the rates).

(*b*)—The pottahs should be submitted for the Collector's approval: if not approved, they were invalid.

(*c*)—The exact sums payable by the ryots should be mentioned in the pottahs.

(*d*)—Over and above the rents so shown no new abwab or cess could be imposed under any pretence whatever.

(*e*)—The custom of varying the terms of the pottahs according to species of produce was condemned, but where it existed variations in the produce were to be a ground for a new engagement and not for forfeiture.

(*f*)—Every ryot had a perpetual right of renewal of his pottah, framed as above, at the customary rate of rent.

To any one who considers what these provisions mean it will be apparent that, had they been observed, they must have been effectual in preserving to the tenantry of Bengal *the permanent possession of their lands at the pergunnah rates of rent.* For what did those provisions purport to do? They purported to subject to the Collector's supervision and control all dealings between the zemindar and ryot in regard to the tenure of land and rates of rent. *In other words, they restricted by certain definite rules freedom of contract between the ryot and zemindar.* The provisions, however, were not generally observed. It was not, on the one hand, to the zemindar's interest that they should be observed; and on the other, the ryots feared that by entering into specific agreements they would weaken, if not forfeit, these customary rights, which had come down to them from ancient times. It was in vain that Lord Cornwallis strove to force his summary procedure for securing a record of rights upon the country by declaring in Regulation IV of 1794 that the mere tender by zemindars of "pottahs according to the form approved and at the established rates" should bind the ryots. In vain, too, did he strive to reconcile the zemindars to the interchange of leases and counterparts with their ryots by establishing a certain line of distinction in regard to rent matters between the Judicial and Executive Departments of Government. This he did by transferring to the civil courts, then newly established, the determination, subject always to the maximum limit of the *pergunnah rate*, disputes regarding *the terms*, while leaving still with the Collector the approval of *the forms* of the pottah. Neither zemindars nor ryots would accept the scheme; the former aiming at arbitrary power, the latter fearing some hidden danger to their immemorial customary rights. Therefore the scheme remained practically inoperative. Fortunate would it have been for the country had its inefficiency been earlier recognized, or, when at last perceived, had the Government of the day boldly faced the difficulty and undertaken those detailed enquiries which Mr. Shore had recommended as part of his plan for a Permanent Settlement. This, the best and wisest course, was unfortunately not adopted; while to remove all ground of excuse for non-payment of the revenue, the legal powers of zemindars in regard to the collection of rent from their ryots were largely extended by Regulation VII of 1799. The result of that extension was a further invasion of the rights whose integrity had been guaranteed to the ryots, and the almost total abolition of the pergunnah rates of rents. Within the short space of 12 years from this extension of the power of the zemindars in the matter of realizing rents, and of 20 years from the adoption of Lord Cornwallis' royal road to a record of ryots' rights, things had come to such a pass, owing to continuous and excessive enhancements of rent, that, writing in 1812, Mr. Colebrooke, a strong supporter of the Permanent Settlement, was brought to say that "in this state of matters it would be better to abrogate most of the laws in favour of the ryot, and leave him *for a certain period, to be specified*, under no other protection for his tenure than the specific terms of the lease which he may hold, than to uphold the illusory expectation of protection under laws which are nearly ineffectual." If such a "thorough" policy had been adopted, the subsequent facts would at all events not have harmonised so badly, as we know they did, with the professions of Government which tolerated, while always deploring, their existence.

Reasons why these provisions remained inoperative.

The equitable principles if the Permanent Settlement had, however, that full weight with the Governments of those days that they have now, and always must have with Her Majesty's Government in India. Instead therefore of abandoning the ryot to make such terms as he could with the

Effect of subsequent legislation on the rights of ryots. Regulation V, 1812.

zemindar, a further effort was made in Regulation V of 1812, to be repeated in a more limited form in Regulation VII of 1822, to secure to the ryot that protection which was his by the ancient law of the country, and of which he would undoubtedly be in the enjoyment to-day had not Lord Cornwallis differed from Mr. Shore as to the right way for securing to him its full benefits. This attempt, like all previous attempts in the same direction, ended in failure. The Regulation was, in the words of the Court of Directors, an "imperfect corrective" of the evils it was intended to remedy. Indeed, by admitting of a legal construction which its framers never contemplated, Regulation V of 1812 was perverted into an instrument of wholesale enhancement of rent, just as half a century later Act X of 1859 was, through a similar unforeseen and unintended interpretation, perverted into an effective weapon for preventing the growth of occupancy rights. It is unnecessary to pursue this aspect of the case at any further length here, or to repeat the often quoted passages* (to which, however, I give the references) from the proceedings of the Indian Government, from the despatches of the Court of Directors, or from the judicial *dicta* of the Highest Courts in India and of the Privy Council, in which the true theory of the Permanent Settlement in regard to the rights of the ryots was reiterated from time to time forcibly, but fruitlessly. It is probable that the political troubles connected with the rapid growth of our empire served to divert attention from the condition of agrarian Bengal before the authoritative opinions to which I have alluded could bear fruit in befitting action. In those days Bengal had no local Government of its own, and the Government of India, immersed in larger concerns, could devote to it but scant attention. In the Upper ("Ceded and Conquered") Provinces encroachment on the rights and privileges of the agricultural community produced disturbances which effectually challenged the attention of the Government and led to the appointment of a Commission of Enquiry under Regulation I, 1821, to remedy the abuses complained of. Similarly in 1840, the detection of abuses in the permanently-settled districts of the Benares Division led to these enquiries and records of rights which are now pronounced to have been "the salvation of the rights of the ryots" in those localities (correspondence between Government of India and Secretary of State—Calcutta, 1883, page 51). The Bengal ryot is more docile or perhaps less gifted with masculine qualities than his neighbour of the North-West, and thus it came to pass that, while the latter successfully resisted, the former submitted to encroachments on his rights. The consequence was that, as the Lieutenant-Governor (Mr. Rivers Thompson) has observed in a communication to the Government of India on this question, "the power of the landlords grew beyond controllable limits, and exercised an almost permanent influence dangerous to public stability and order." It was in such a state of things that the law of 1859 was passed.

* Despatches of Court of Directors, 1819; Despatches of Government of India, 1822; Select Reports, II—174, VII—182; Sudder Dewani Adalut Constructions, 67, 257, December 1850, December 1851, 620, December 1852, 234, 714; Moore's Indian Appeals 11, page 449, and 13, page 270.

Act X, 1859. Origin of present legislative proposals.

That law was, as all admit, meant to protect the interests of the ryots. It was designed to give security of tenure at fair rents to the cultivator of the soil—to give him, in fact, that protection which the Government had always consistently admitted was only his due under the customary law of the country. Owing, however, to causes too well known to need narration here, the hopes that were based on Act X were wrecked, and from being an enabling and conservative measure it has become, wherever zemindari encroachments have not provoked succesful resistance, the effective means of destroying such legal rights among the ryot class as have, for nearly a century, withstood the assaults of organized zemindari power. And it is a strange commentary upon the history of this question that the action which has resulted in the measure now before the Legislative Council should have been first taken at the instance of the zemindars, who applied for legal aid to beat down the opposition which their own exactions had created. Agrarian disturbances in Behar, and later on in Bengal, had drawn Sir George Campbell's attention to the question. He, with his accustomed insight, saw that the question could not be dealt with piecemeal; that it could only be satisfactorily settled by such a thorough enquiry into and record of rights as the present Bengal Government has proposed. Famine troubles, however, intervened, and the consideration of the Rent question in Bengal was postponed till the pressing danger had been averted. When the danger from famine had passed, the question was taken up at the instance of the zemindars, in the shape of a proposal to give landlords increased facilities for collection and enhancement of rents. It soon became apparent that the effect of the proposal on the ryots had to be considered, and the perception of the issues thus raised at last roused the Government to a full consciousness of the dangers of the position. The Rent Commission was appointed, and the result of their labours was a measure which, if it provided for the reasonable interests of zemindars, was also not neglectful of the just claims of the ryots. The zemindars were not satisfied with the result. They, it would seem, prefer the possibility of large to the certainty of moderate rents punctually paid. Therefore, dissatisfied with the results of their own action, they now assert that there is no need for any legislation, forgetful of the fact that they themselves had, during several years, importuned the Government for it. It is now, however, too late to recede, even if retreat were desirable. Indeed, had the zemindars not moved after the Pubna riots of 1873, events would have moved of themselves, and the Government, which had postponed action till the latest moment, would have been compelled to act whether the zemindars wished or not. With these remarks I shall pass on to the second part of the memorial, which formulates certain objections to the principles of the Bill.

Zemindar's objections to the Bill classified. Reference to Lieutenant-Governor's letter of 27th September 1883.

10. It will be observed that the objections raised in this portion of the memorial have reference to five points:—(*a*) To the definition of the "settled ryot;" (*b*) to the prohibition of freedom of contract; (*c*) to the imposition of *maxima* limits on rents; (*d*) to the transferability of occupancy rights; and (*e*) to the distinction between *khamar* and *ryoti* land. Those are doubtless cardinal points of the Tenancy Bill, and the discussion of them is more germane to the actual question with which we have to deal, than discussions regarding the rights of zemindars in the early days of British rule. In regard to the points raised, however, I have to say that they have all been amply discussed in the Bengal letter No. 972TR of 27th September last, to the Government of India. A copy of that letter was supplied to the Secretary to the Central Committee of the Landholders of Bengal and Behar early in October, but it is not apparent from this memorial that the views of the Lieutenant-Governor upon those points as therein expressed have received attention from the memorialists. There is no objection now urged against the definition of the "settled ryot," nor against the imposition of a maximum limit on rents, nor against the transferability of occupancy rights, nor against the propriety of distinguishing *khamar* from *ryoti* land, which has not been fully discussed and substantially answered in that letter. And if on the question of prohibiting contracts any addition should be made to what is therein said, such addition will, it is believed, be found in the remarks that have been offered in this memorandum as to the limited character of the contracts into which, under the Permanent Settlement, a zemindar could enter with a ryot. Having regard, then, to the fact that the Government of Bengal has formally impugned the correctness of the representations which the zemindars of Bengal and Behar had already separately made on these points, I must be allowed to express my surprise that those representations should now be repeated in a memorial addressed to Her Majesty's Government without an attempt being at the same time made in that memorial to show that the views enunciated by the Bengal Government were wrong. It is to be presumed that the object at which all aim in this discussion is the elucidation of the truth. In the present instance that common object would have been advanced if, instead of a mere repetition of objections already threshed out, and of mistakes already corrected, the zemindars had indicated the points wherein the replies of the Bengal Government to those objections were defective, or wherein its views were unsound. As the matter stands, I could add nothing to what has already been stated on these points in the letter of the 27th September last; and it would be wearisome to repeat in this memorandum the full exposition of the reasons which the Lieutenant-Governor then gave for thinking the arguments brought against the Bill to be unsubstantial, and inconsistent with the actual facts prevailing throughout the country. It may, however, be desirable to offer here some remarks on the general policy of the proposed legislation.

General policy of the Bill considered. Fixity of tenure at fair rents deducible from Settlement Regulation.

11. This policy may be broadly described by a phrase often used in recent Parliamentary discussions in England as the policy of "the three F's;" in other words the tendency of the Bill now before the Council is to give to the peasantry of Bengal a right to hold the land they cultivate as long as they pay a fair rent for it, with the additional right of selling their interest in their holdings. The memorialists go the length of asserting that these provisions of fixity of tenure, fair rents, and free sale are revolutionary provisions which not only confiscate the property of the zemindars, but are likely to prove ruinous to the best interests of the tenantry themselves. Yet the references which I have already given to the discussions which preceded and followed the Permanent Settlement, and to the letter of the Regulations themselves, have I trust made it abundantly clear that the settled cultivator in 1793 had at least two out of the three F's—that he had fixity of tenure in his land so long as he paid a fair rent (the pergunnah rate) for it. If I am to add further proofs on this point, I can quote the opinion of Lord Cornwallis, the author of the Permanent Settlement, who says:—"Whoever cultivates the land, the zemindar can receive no more than the established rent, which in most places is fully equal to what the cultivators can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit" (*Minute of 3rd February* 1790). Coming to more recent times I can quote the opinion of the framers of Act X of 1859, who, in the Statement of Objects and Reasons for that Act, say "the Regulations declare that ryots are entitled to receive pottahs for the lands cultivated by them, and to have their rates of rent adjusted on certain specified principles. They also prescribe penalties for the exaction of any excess above the legal rate of rents or of any unauthorized cess. *Further, they recognize the right of all resident ryots to the occupancy of the lands cultivated by them so long as they pay the established rent.*" And the views expressed by Lord Cornwallis on this point have been consistently adhered to from that time to this by every Governor-General in Council who directed attention to the question, by the highest judicial authorities in India, and by their Lordships of the Privy Council. The authorities for these statements have been cited in the margin of the 9th paragraph of this memorandum, and even a cursory examination of them will satisfy every impartial man that so far from being an infraction of the principles of the Permanent Settlement, the proposals made by the Bill with

the object of securing the cultivator in the possession of his holding so long as he punctually pays a fair rent, is in absolute harmony with those principles. On the question of fixity of tenure and fair rent, the Bill proposes to do nothing which had not been contemplated by the framers of the Permanent Settlement. Furthermore, it proposes to do nothing more than recognize existing facts, for even now the leading exponents of zemindari opinion in Bengal explicitly admit that nine-tenths of the peasantry of the province virtually have rights of occupancy* though they cannot legally establish them. Therefore all that the Bill proposes to do on this head is to recognize in the individual the existence of those rights which the mass admittedly possess. Put in this plain form it must be admitted that if the voice of reason is to be at all heard on this question, the proposals regarding fixity of tenure at fair rents is no revolutionary, but a just and moderate proposal, justified by the past history and by the present circumstances of the country.

* The *Hindu Patriot* newspaper (edited by the Hon'ble Rai Kristo Das Pal, Secretary to the memorialists) in its issue of November 26th, 1883, admits that 90 per cent. of the ryots in Bengal have acquired rights of occupancy.

12. It is, however, objected that whatever may be said regarding fixity of tenure at fair rates, no argument in favour of *free sale* can be deduced from the Regulations. As far as I know, it has not been asserted that at the time of the settlement the tenant's right in his holding was generally saleable, though there may have been local customs to that effect, which Regulation VII, 1799, would have saved. If not saleable in 1793, however, the right seems to have soon afterwards become saleable; for I find the following admission † of the transferability of the right made in a petition submitted to Government, so long ago as 1851, by the British Indian Association:—"It has, we believe, not yet been denied that the interest of a *khudkhast* ryot is transmissible *by sale*, gift, and succession, and that his right of occupancy does not terminate by any of these acts or omissions which determine the rights of lease-holders generally. *In certain points of view a khudkhast tenancy constitutes the highest title to real property known to the laws of this country.*" To this admission I invite special attention; for it is a noticeable (though not an unique) commentary on the consistency of Bengal zemindars, who now do not hesitate to say that ryots have no saleable rights in their holdings at all, nor ever had any!

Free sale. Inconsistency of zemindars' opposition.

† Quoted in Vol. I, Appendix IX of "Zemindari Settlement of Bengal." This petition was signed by, among others, the late Babu Sumbhoo Nath Pundit, afterwards the first native Judge of the High Court; Babu Anoda Prosad Banerjea, now Senior Government Pleader; and the late Babu Hurish Chunder Mukerjea, the distinguished Editor of the *Hindu Patriot* newspaper, and Secretary to the British Indian Association—all leading exponents of the views of the zemindars.

Without desiring, however, to press the zemindars unduly with their change of front on this question of freedom of sale, I would beg to point out that the question with which the Bengal Government had to deal was not a question of theory nor of law, but a question of actual facts. The Lieutenant-Governor took facts as he found them. He found that these tenant-rights were being, as a matter of ordinary practice, transferred in every district in Bengal, and he accepted the recommendations of the Famine Commission, which, as I was glad to understand, where besides in harmony with his own opinions, that where free transfer had become customary, the custom should be recognized by the law. Every one is agreed upon the point that we cannot stop free sale without interference with the spontaneous development of the agrarian economy of the province. At best we could only impede or discourage its growth. The question therefore was narrowed down into a choice between the full recognition of the practice of free sale, or a recognition of it subject to the landlord's *veto*. The zemindars would agree to "free sale" subject to this *veto*; but it was believed—and in this belief the Lieutenant-Governor concurred—that to give the landlord a *veto* on the sale of the tenant's right would be to nullify freedom of sale or to foster the growth of that system of fines on transfers of property which has been generally condemned as hurtful, and as lessening the value of the tenant-right to the cultivator. The practice of free sale exists in every district of Bengal, unfettered by any *veto* ‡ or by fines; and therefore the Lieutenant-Governor took things as he found them, seeing also a practical confirmation of this way of treating the subject in the noticeable fact that the portions of the country where the custom of free sale has been best established are those in which the fewest evil results have followed from its establishment.

Free sale of occupancy rights discussed.

‡ In a previous memorial the zemindars of Behar had denied absolutely the fact that occupancy rights were sold in any case. When the fact that they were freely sold was put beyond doubt by the statistics quoted in the Lieutenant-Governor's report on the Tenancy Bill, dated 27th September 1883, the zemindars fell back upon the assertion that the statistics proved nothing, as it was not apparent that the landlord's consent had not been previously obtained to such sales. The Lieutenant-Governor's position, however, was that the landlord's assent was never obtained. Manifestly, if assent were essential to the validity of the transfer, the fact that it had been given would form part of the record or deed of sale. No such assent, however, is ever recorded.

The chief evil apprehended from the recognition of unrestricted freedom of sale is the acquisition of occupancy rights by money-lenders and other non-agriculturists under whom the actual cultivator would become a rack-rented serf. That matter was considered in the Bengal Government letter of the 27th September, in which not only was the remoteness of the danger pointed out, but means were also suggested for counteracting it, should it prove real. In addition to the representations made in that letter, I would here state that, as far as inferences can be drawn from the available statistical information on the question, the danger is mostly fanciful. Indeed, it is not improbable that it is the very uncertainty

attaching under the present state of the law to the transferability of the ryot's right which induces money-lenders to buy these rights to any considerable extent. Wherever the saleable character of the right is well established, there the money-lender's debt is secured, and thus, having no need to purchase the right in self-defence, he allows it to go to the highest bidder. In the richest districts the highest bidder is usually the cultivating ryot, and even the British Indian Association do not object to freedom of sale if only it could be restricted to the cultivating classes.

NOTE.—The saleable character of occupancy rights is best established in Bengal Proper, and the following figures show the number of cultivating ryots and of mahajans who bought occupancy rights during the year 1881-82, the last for which full information is available in those districts of the undermentioned divisions where the people are considered to be best off.

		Ryots.	Mahajans.
Burdwan Division	...	2,772	470
Presidency "	...	903	212
Rajshahye "	...	2,241	124
Dacca "	...	2,878	164
Chittagong "	...	2,708	116

With these remarks on the general tendency of the proposed legislation, I shall now pass on to the other portions of the memorial, trusting that, for a discussion of particular objections, reference may, if necessary, be made to the letter of the 27th September last (the Bengal Report on the Bill).

Zemindar's objection to the opportuneness of the Bill considered.

13. The third part of the memorial essays to prove that the circumstances of the country afford no justification for the enactment of the proposed law. In dealing with this objection I think it unnecessary to go further back than 1881, because in that year, when moving the Government of India to undertake legislation on this question, Sir Ashley Eden submitted with his report a memorandum on the history of the Rent question in Bengal since the passing of Act X of 1859.

That memorandum established the following propositions :—

(1)—That from the year 1863 downwards the necessity of undertaking somehow or another a radical revision of Act X of 1859 had been recognized by the Government, the Courts and the public.

(2)—That after the outbreak of the Pubna riots in 1873, this necessity was recognized on all hands as *urgent*; and that, too, in the interests as well of the landlords as of the tenants.

(3)—That from the year 1875 the Local Government had, with the concurrence, approval, and aid of all parties, been endeavouring to arrive at some conclusion as to the shape which such a revision of the law should take.

(4)—That until it was found that the report of the Rent Commission failed to settle the disputed points entirely in favour of the landlords, none were more eager to have an amended rent law than the landlords themselves.

The memorialists now quote passages from administration reports to show that the circumstances of the country have lately improved; and that whatever justification may have been found in the relations between landlord and tenant some years ago for legislation on this question, that justification no longer exists. They cite Sir Ashley Eden himself as a witness to this improved condition of things.

Sir Ashley Eden in favour of legislation at present time.

14. No one is more willing than I am to admit that in 1881 the condition of these provinces was better than it was in 1877, and I agree with Sir Ashley Eden in attributing the improvement to better administration and to abundant harvests. It is certainly true that in many portions of Bengal Proper and throughout Behar, the best effects followed from that more intimate knowledge of the people on the part of district officers and from that greater trustfulness in district officers on the people's part, which was one good result of the exertions of Government during the famine of 1874. A succession of splendid harvests combined with this more active administration in the interests of the people to mitigate the causes of disquiet, which every one admits had previously existed; but that these causes were too deep-seated to be removed by the personal exertions of individual officers, or by a few years of prosperity, no one believed more thoroughly than did Sir Ashley Eden. And therefore we find him, while reciprocating the congratulations of the landlords on the improved state of affairs, still forcibly impressing on the Government of India that the tranquillity which prevailed was due, not to any permanent improvement in the relations of landlord and tenant, but to the quieting influences of good harvests and to the expectant attitude of the people. He also warned the Government of India against being misled by these transient and deceptive appearances into a relinquishment of their purpose to take advantage of the lull in the rent agitation with a view to placing that question on a satisfactory and permanent basis. That Sir Ashley Eden wrote with foresight is clear from the fact that under the pressure of adverse seasons there are already apparent signs of an increased tension between landlords and tenants in various portions of the country; while the straits to which the partial failure of last year's rains has already reduced some, and may possibly bring other, portions of the province during the coming year, is an indication that the condition of the cultivating classes is most insecure and that, in Sir Ashley Eden's words, "all the elements of disturbance are still existent." With the object of showing that this view of the condition of large portions of the

province is held by responsible local officers, I would, in continuation of the similar testimony quoted by Sir Ashley Eden, invite the attention of the Government of India to the following extracts from Divisional Administration Reports for 1882 and 1883

Necessity for legislation deducable from Divisional Administration Reports or period after Sir Ashley Eden's departure.

Patna Division.—Writing on the relations between landlord and tenant in the Patna Division, the Commissioner says:—

I submit the following as the opinion of the Collector of Mozufferpore, Mr. Normat. Though I do not concur in the very general condemnation he passes, I admit that there is much correctness in his opinion.

The great majority of the zemindars are certainly of a bad type. Blinded by a narrow, grasping avarice, and devoid of interest in, or sympathy with, their tenantry, their main *object is to exact from them the utter. most farthing of rent, and they have no idea whatever of the existence of any duties or obligations on the part of the landlord towards his tenants.* For the welfare of their ryots they care nothing; and no pecuniary or other sacrifices for the general good of their estates, no act of beneficence or liberality ever suggest itself to them. It is feared that the propensity to rack-renting is increasing *pari passu* with the impoverishment of the zemindars, caused by the minute sub-divisions of estates under the operation of the law for the partition of estates. Bad landlords, however, as the zemindars of this district are, yet it must be conceded that their general attitude is loyal, and their conduct is submissive and obedient to the authorities.

The Sub-Divisional Officer of Sitamarhi states that things have gone on much as usual during the year under report; that Baboo——is high-handed, and Baboos——and——are grinding landlords, while Baboo——and——are superior to the rest.

Commenting on that passage. Mr. Rivers Thompson in his review of the year's administration on the Patna Division made the following observations:—

Material condition of the people.—Under this head the Commissioner says that the deficient harvests notwithstanding, there was "little decrease in the comfort of the people, the surplus of previous years having the result which might be expected." The fact, however, that the preceding year was also one of short crops, and the quotations from the local reports which the Commissioner gives seem to indicate that, if Mr. Halliday's view be not actually optimist, it at all events shows the brightest side of things. "The material condition of the people varies directly with the rainfall," says the Collector of Durbhunga, and the Lieutenant-Governor has no doubt that what is true of Durbhunga is to a large extent true of all Behar districts, portions of Shahabad perhaps excepted. In those parts of Shahabad we find a body of substantial ryots with permanent interests in the soil, for which they pay moderate rents. These ryots, among the mass of the Behar peasantry, are alone above the vicissitudes of season, presenting a marked contrast to those other ryots whose tenures are not secure, and whose rents are not moderate. The Commissioner is disposed to dispute the view that it is fixity of tenure at fair rents which differentiates the Bhojepori from his fellow ryots throughout the division. Other distinctions of a minor character may exist; but even if they be not traceable to tenant-right, still, in the Lieutenant-Governor's opinion, that is the true and efficient cause of the Bhojepori's prosperity. Similar effects will follow similar causes. Until fixity of tenure at fair rents be the rule, and not the exception, throughout the Behar districts, we may expect to find the condition of the agricultural classes "varying directly with the rainfall," and we may be prepared to find the people, and the Government which has charge of them, alternating between hope and fear with the progress of each monsoon.

Bhagulpore Division.—Writing on the same subject the Commissioner of this Division says that the relations between landlord and tenant was much as usual (a reference to Sir Ashley Eden's report will show that usually the relations were strained). "I have elsewhere," continues Mr. Barlow, "mentioned that the strained relations between the three principal zemindars in the district and their ryots apparently improved during the year (this was owing to the active interference of Government on behalf of the ryots). I have also referred to the unsatisfactory relations between the zemindar of——and his ryots." Other instances are given of strained relations between zemindars and ryots in this Division, and a contrast is suggested between the content and prosperity which now prevails in the Southal Pergunnahs under the settlement, and the depression which exists in those estates in which neither fixity of tenure nor fair rents is customary.

Rajshahye Division.—The following extract from the Lieutenant-Governor's Resolution on the administration of this Division indicates the relations which prevail in North Bengal between landlord and tenant at the present time:—

Relations between landlords and tenants.—On the whole the year has been characterized by a satisfactory absence of overt quarrels between landlords and tenants in all districts, but it is to be feared that the report given by the Collector of Pubna "that there is an utter want of sympathy between the landlords and their tenants" is true for the most part of the whole division. The following remarks made by the Sub-Divisional Officer of Serajgunge on this head are worthy of consideration, and give what is probably an accurate account of the state of affairs in a large portion of the province:—

"The attitude of zemindars and ryots towards each other is very much the same as in previous years. This is nevertheless a difficult question to comprehend, as there seems to be such a remarkable mixture of hostility and sympathy in their dealing with each other. Generally, however, the zemindars insist upon having their pound of flesh, and it is the ryots who show generosity. It is not at all unusual to find the ryots voluntarily contributing a cess of so much in each rupee of their rent to enable the zemindar to pay of debts which extravagance or mismanagement have led him to contract. A remarkable case of this kind came to my notice during the year, where the ryots made an attempt, quite voluntarily, to save their zemindar, although they must have known that he was hopelessly involved and that their contributions would be lost. This zemindar had been engaged with the ——— in litigation over a certain question since the year 1827. The final order was given by the Judicial Committee of the Privy Council in the year 1881, when the ——— obtained a decree for about five lakhs, with a set-off of about one and a half lakh of rupees, leaving a balance of three lakhs or thereabouts in their favour. In this case I had an enquiry made as to whether any coercion was being used towards the ryots, but found that their help was voluntarily given. On the other hand, the ryots know perfectly well how completely they can resist, by combining together, any claim made by the zemindar which they are not disposed to admit, and attempts to enhance their rent are frequently met in this way. In such cases, the zemindar is generally compelled to retreat from his position in the end, as he cannot afford the expense of enhancement suits, and cannot live when his rents are stopped. This course, however, is taken by the ryot with some reluctance, as, since the time of the Pubna riots, it has been associated in their minds with defeat and loss in the end, and is often the cause of their being involved in criminal cases and sent to jail. During the years which followed those disturbances, the zemindars made large

enhancements of the rent, as the ryots were cowed by their defeat, and therefore submitted more easily. Latterly they have become more independent again, and find that they can effect their object by quiet and passive resistance. There can be no doubt that the spirit of independence among them is becoming stronger each year, and that they are becoming more disposed to insist upon their rights. *Generally speaking, they distrust their zemindars, and the feeling between the two is full of hostility.* The——zemindars manage their estate very well, and I think that the feelings of their ryots towards them are much less full of hosility; but this is perhaps the only exception.

The cost of management of an estate seems to fall almost entirely on the ryots, as the ostensible pay of the amla is ridiculously low, and the latter make it up by extorting contributions from the ryots on every possible ground and pretext. The zemindars thus cannot be held to have performed their part of the contract in which they entered when the permanent settlement was made, as far as the interest and welfare of their ryots are considered. The prosperity which the latter do enjoy is entirely due to their own industry, intelligence, and independence of spirit, and their zemindars spend all their income—sometimes a good deal more—on idle display or senseless litigation. There are some exceptions among them, but this is the rule.

It is noticeable that in the Rungpore district, where it is said "land is plentiful but ryots few," the relations between the landlord and the tenants are entirely peaceable.

Dacca Division.—The Commissioner reports as follows:—

Mr. Sharp, of Furreedpore, has made no remarks on this subject. Those of the other officers are given below *seriatim.*

Mr. R. C. Dutt, Officiating Magistrate of Backergunge, writes:—"The conduct of zemindars has been generally satisfactory. Most of the large estates are held by non-resident zemindars. * * * * Estates are generally managed by low-paid agents of absent zemindars and the petty tenureholders of the district. These men and the resident zemindar often require to be looked after. Many of them were legally bound down to keep the peace and nothing serious happened. I am obliged to Mr. Fiddian for the following note:—

"There is a somewhat bitter dispute between the——zemindars and their tenants about rents. The former wished to collect at enhanced rates, or more probably to amalgamate with the former rents various illegal cesses which had been from time to time levied. Great care was taken by the district authorities to prevent any outbreak, and during the year under report nothing serious occurred, but the dispute has not as yet been settled.

"Nothing special has occurred in the——estate, the state of things having sufficiently improved to warrant a reduction in the special police force stationed there.

"The Officiating Collector of Dacca, Mr. A. W. Paul, says:—'With the exception of——and——no zemindar has made himself conspicuous for intelligence and true public spirit. There have been few complaints against zemindars, so I conclude their relations with their tenantry are fair. Many are quarrelling amongst themselves, but in very few cases has it become necessary to bind them down to keep the peace.'

"Of the Mymensingh zemindars Mr. Waller states:—'Rajah——and Baboos——and——are the most enlightened and liberal of the——family, and do most for the good of the public. The management of the state of Baboos——and——and of Baboo——has not been satisfactory.'

"I am glad to be able to say that none of the zemindars have to be mentioned as having seriously misconducted themselves; in fact, *in the present state of the relations of many of them with their tenantry,* they are to be commended for not having disturbed the peace of the district."

From the Presidency Division Mr. Monro reports as follows:—

Most of the zemindars in the 24-Pergunnahs are residents of Calcutta and its vicinity. Maharajah —— has been liberal in his dealings with his tenants and has shown practical interest in the support of educational institutions. Baboos —— and —— are again said to be wanting in sympathy towards their tenants, and are again this year the subject of unfavourable remarks. The treatment of his ryots by the latter zemindar in the district of Khulna is said to be good, and his tenants there are contented. Baboo—— comes prominently to notice during the year on account of the oppressive and illegal kabuliats which his agents have been obtaining from ryots in his estates. I have since heard, however, that these kabuliats have been withdrawn. Baboo —— is at present not on good terms with his ryots, and the management of his estates in the district of Khulna is also not well spoken of. * * *

In Nuddea the conduct of the zemindars has been generally peaceful. *The rent agitation in Meherpore has been put a stop to by judicious severity in dealing with the rioters, but a good feeling between the ryots and zemindars cannot be said to have been restored.* Baboo —— and Baboo —— have been favourably reported. There was no work undertaken by any of the zemindars during the year deserving of special commendation.

In Jessore the conduct of the zemindars has been as usual. The naib of Baboo——is reported to have oppressed the khas mehal ryots of——but the dismissal of a jemadar put an end to the oppression. There were several cases of rioting between Baboo——and Baboo——in connection with the establishment of a rival haut.

The disputes in the —— estate have been quiet this year, but the members of the family are as disunited as ever. There were certain land disputes between the Rajah of —— and the Manager of the —— indigo concern and the ryots. An amicable settlement has been effected through the intervention of the sub-divisional officer of ——. The relations between Mr. ——, Manager of the —— indigo concern, and his neighbours, are not good, and this unsatisfactory state of matters has already led to a case of rioting. A new sub-divisional officer has lately been deputed to —— and his special attention has been directed to controlling incipient turbulence in that part of the district affected by the disputes above referred to.

The preceding extracts will, I venture to believe, establish that there exist in an overt form throughout a very large portion of the province serious disputes and causes of dispute between landlords and tenants with which the existing rent law is ineffectual to deal. These causes were naturally less operative during the past few years of abundant harvests than they were previously, or than they can be reasonably expected to remain in that cycle of indifferent harvests on which the province would seem to have entered. And this conclusion is also deducible from the facts which have transpired in connection with the administration of the land revenue during the last year. The following quotation from the Lieutenant-Governor's review of the Land Revenue Administration of the Province, with which I conclude this portion of the subject, will indicate what is the source of the difficulty and what the true remedy:—

Necessity for legislation deducible from Land Revenue Administration.

Relations of landlord and tenant.—There were fewer enhancement and more relinquishment notices than in the preceding year; but the Board do not think the figures on either head indicative of the real feelings of zemindars and ryots, or such as to call for special remark. The Board give extracts from some

of the divisional reports as to the state of feeling generally between zemindars and ryots in these divisions; but do not sum up the effect of the opinions they quote, which, besides, cannot be taken as a satisfactory indication of the state of opinion in other divisions which are not mentioned. However, it may be noticed that in the Rajshahye Division opinions are of a negative rather than of a positive character, the fact that in most districts no open breaches of the peace have occurred being apparently a matter for congratulation. The evidence before the Government, however, seems to show that a feeling of distrust and hostility exists between zemindars and their ryots (with but few exceptions) in this division. As the Collector of Pubna says: "General testimony concurs in the statement that there is an utter want of sympathy between landlords and tenants." The Commissioner of the Dacca Division states that, while "everywhere considerable difficulty is felt in realizing rents," in Mymensingh "the unsatisfactory relations between landlords and tenants have grown and become intensified." Such a state of tension, says the Collector of Mymensingh, "cannot be expected to last very long without either collapsing or developing itself, and it is to be hoped that the new Tenancy Act will soon provide a *modus vivendi* by providing landlords with a workable machinery for enhancing to a fair figure, and for getting in arrears of rent admitted to be due. Under the present law, enhancement by suit in court is virtually impossible, and the levy of arrears by suit costly and troublesome, without being speedy."

If enhancement by suit in court be difficult, enhancement by illegal cesses out of court seems easy, if one is to judge by the procedure of the zemindar of——, who has habitually levied a cess called "*Saheblok khilane ka kurcha*" (expenses of hospitality), because on one occasion, years ago, he entertained some European gentlemen at dinner.

From the Patna Division the Commissioner reports as follows:—

"The relations between the landlord and the tenant were not such as to call for any special notice. They were on the whole peaceful and undisturbed. It is, however, generally believed that there is a want of real confidence and cordiality between the two classes. Instead of working together in a friendly way, they try to take advantage of any points which may tend to the other's loss. Writing on this subject, the present Collector of Mozufferpore characterises the zemindars of his district as short-sighted, grasping, and oppressive. This is generally true of the zemindars of Behar as a class; but it is satisfactory to observe that the ryots are gradually and steadily awakening to a knowledge of their rights and privileges, and that they do not now, as they used to do before, submit, without strenuous opposition, to the illegal enhancements of their landlords."

In this "short-sighted, grasping, and oppressive" policy on the part of the zemindars, and in this growing "strenuous opposition" on the part of the ryots, the beginnings of serious trouble are perceptible, if early measures are not taken to counteract them by removing their obvious causes. As the late Lieutenant-Governor, shortly before relinquishing his office, said on this subject of agrarian disquiet in Bengal: "All the elements of disturbance are still existent; and the Lieutenant-Governor would strongly advise the Government of India to have the rent question settled in Bengal while the country is tranquil, while seasons are favourable, and the people well off, and reason can make its voice easily heard, rather than allow things to drift on till another famine or a second outbreak of the Pubna riots compel the Government to take up the subject with all the haste and incompleteness that too frequently affect measures devised under circumstances of State trouble and emergency." Sir Ashley Eden wrote in the presence of splendid harvests and general prosperity. But even now significant indications are not wanting that a continuance of this prosperity cannot be counted upon; while with short crops agrarian unrest is, under present circumstances, certain to occur. It therefore seems to Mr. Rivers Thompson to be the imperative duty of the Government no longer to postpone the legislative measures necessary for placing on a satisfactory and permanent basis the interests of all classes of the agricultural community.

Referring to the levy of illegal cesses by zemindars, the Commissioner of Patna reports the fact that "a new form of illegal cess is now taken in the name of Government by unscrupulous landlords. Thus, if the road cess demand is half an anna in the rupee, the proprietor will take one or one-and-a-half annas from the ryot." This method of extortion is, the Lieutenant-Governor fears, very general throughout the Patna Division, and it will continue to be so until security of tenure and a record of rents really demandable afford the ryot a necessary protection. The Lieutenant-Governor is quite willing to recognise the voluntary character of many forms of cesses; but this only enhances the difficulty of dealing with the question.

From Orissa and Chota Nagpore but scant indications of public feeling on agrarian matters have been reported. The reports declare that matters are there generally in a satisfactory condition; but the Lieutenant-Governor does not fail to notice the fact that the aggregate number of rent-suits in those divisions has increased even over the large number reported last year; that in Hazaribagh the notices of relinquishment were filed by tenants of a landholders "who can never suffer his ryots to remain in peace," while the settlement cases from Chota Nagpore, which have come before Government for revision, tend to show that large bodies of the tenantry are discontented.

Zemindar's objection that official opinion is against the Bill considered and refuted. Patna Division.

15. I shall now offer a few observations on the last part of the memorial, that which deals with the opinions which have been expressed on the Bill. The memorialists state that the weight of official opinion is against the proposed legislation. "There are not," they say, "five officers of any standing or position in the whole province who approve of the principles of the Bill." That statement, however, is certainly incorrect; and its incorrectness admits of demonstration from the published correspondence. To begin with Behar. The Commissioner and all the Collectors of the Patna Division, while disapproving of a few, approve of the great majority of the proposals made in the Bill. Some of the recommendations made by the officers of the Patna Division have been accepted by the Lieutenant-Governor; some have been declined as militating against the existing law on points in which no change is needed. There is reason to think that on some points the Bill will be modified to suit the wishes of those whose experience of Behar entitles them to speak with authority. As matters stand, however, I am in a position to assert, *with the Commissioner's recently renewed concurrence*, that the main proposals of the Bill are accepted as necessary and just by official opinion in the patna Division.

Bhagulpore Division.

With regard to the Bhagulpore Division, I would point out that the fundamental provisions of the Bill have been accepted by the Commissioner and by his Collectors. The Bhagulpore Division comprises some districts which have much in common with Bengal Proper, though a large portion of it must properly be considered as included in the Province of Behar. It may therefore be positively asserted that the main principles of the Bill are accepted by official opinion throughout Behar, and that the statement to the contrary hazarded in the memorial is without foundation.

Burdwan Division.

Coming now to Bengal, I would observe that the Commissioner of the Burdwan Division, while criticising adversely certain provisions of the Bill, yet declares that "the present Bill as the final outcome of much protracted and careful argument may be generally accepted as workable and fair to all parties affected by it." This approval of the broad lines of the measure has been expressed by an officer who certainly is not a disciple of the "peasant proprietary school," which the memorialists seem to regard with much antipathy.

It is not proposed that the provisions of the Bill should at once apply to Orissa, but the opinion of the Commissioner of that Province upon its provisions is valuable as that of an able officer whose experience has hitherto been in Bengal. Writing on the general subject, Mr. Larminie says: "The present Bill is certainly a step towards the attainment of a political condition which must be reached in the future, and should therefore be welcomed. Like all attempts at a compromise, it will fail to satisfy those who are interested in retaining matters in their present state, as well as those who are discontented, unless the final end is reached at once. Personally I am of opinion that the proposed Bill is a distinct step in the desired direction, and shall therefore content myself with criticising its provisions in certain matters of detail." Mr Larminie cites the opinion of Mr. Trevor Grant, also an experienced officer, who would be glad to see the Bill go further than it does in securing tenant right.

Presidency Division.—In the Presidency Division, the Commissioner certainly declares himself opposed to several of the changes contemplated by the Bill; but it should be added that Mr. Monro accepts the provisions regarding enhancement "as being such as landlords cannot fairly complain of," while he considers that we are bound to redeem our pledges to suppress the exaction of abwabs and illegal cesses by rent receivers. But it may be asserted that the suppression of the exaction of abwabs and illegal cesses by rent receivers is the very goal at which this Bill aims. If rent receivers only contented themselves with fair rents, there would be but little need for any legislation. It is because they make use of such means as the imposition of abwabs and illegal cesses to exact unfair rents and to compel the ryots to enter into engagements of the objectionable nature which has been brought to light in the Presidency Division to a striking extent, that legislative interference has become necessary. It might therefore be fairly argued that the only question between the Government and Mr. Monro is how that goal, which both have in view, may be best reached. After an enquiry conducted over a period of seven years by the ablest agency at the disposal of Government, the belief has been formed that the principles embodied in the Bill afford the greatest hopes of reaching that goal. Certainly the experience of a century shows that the levy of "abwabs and illegal cesses" cannot be checked, much less abolished, by mere prohibitions, no matter how stringent. The sole effectual method of suppressing them is to strengthen the position of the ryot as this Bill proposes to do. No doubt full weight will be given in Select Committee to the views which Mr. Monro has propounded on the question. It may be observed that Mr. Stevens, the experienced Collector of the 24-Pergunnahs is entirely in favour of the measure, while Mr. Tayler, of Nuddea, approves of many of its provisions.

Chittagong and Dacca Divisions.—The Commissioners of Chittagong and Dacca have given it as their opinions that the Bill is inapplicable to the circumstances of their divisions, and they would therefore propose that its provisions either be not extended to their jurisdictions, or be only extended at the discretion of Government as necessity may arise. Without unduly pressing the fact that the existing relations between landlord and tenant in portions of Eastern Bengal are not satisfactory, I would say that the Bengal Government has always admitted that the circumstances of the Dacca Division differ from the rest of Bengal in that the ryots there, who are chiefly Musalmans, are far stronger than ryots elsewhere. In the Chittagong Division two causes have operated to prevent the excessive growth of agrarian difficulties. On the one hand the minute subdivision of property in some portions of the division has brought about a species of peasant proprietary, which has obviated the undue growth of those difficulties which have elsewhere troubled the relations of zemindar and ryot. On the other hand, the existence of large tracts of waste land in other portions of the division renders the ryots masters of the situation. There the demand is for ryots—not for land, and the former can dictate their own terms. The Bill, if modified as the Lieutenant-Governor has asked that it may be, will provide for the peculiar circumstances of these divisions, and, among other things, furnish the zemindars of East Bengal with that more speedy means of recovering their rents for which they have petitioned.

Rajshahye Division.—It remains to refer to the opinion of the Commissioner of the Rajshahye Division, who alone of all the Commissioners in Bengal has expressed himself as radically opposed to the Bill on all its distinctive features. It is manifest, however, that the Commissioner's opinion of the Bill is influenced by the great disapproval with which he regards what he considers similar legislation in Ireland. Lord Ulick Browne very sweepingly condemns the Irish Land Act, and he is opposed to the Bengal Tenancy Bill because "the result of a similar measure in Ireland was almost disastrous." He would avoid such results in Bengal by not legislating on the Rent-question at all.

It is not my intention on this occasion to enter on an examination of the causes which have produced recent deplorable occurrences in Ireland, nor do I deem it necessary to show how moderate, compared with the Irish Act, is the measure now under discussion Neither shall I consider whether the results of the Irish Land Act are "almost disastrous,

or whether they should be regarded as on the whole encouraging to those who, like myself, look beyond the animosities of the hour to the time when the bitterness of conflict shall have been assuaged. It may indeed be permitted to me to regret that the Irish legislation came so late, for I am of those who think that, had it come earlier, it need not have been so trenchant. "Procrastination has been the secret of the Irish catastrophe" writes Mr. John Morley; and holding this view to be true, I submit, with reference to our own Rent-question, that the lesson which Irish experience most certainly teaches is—not that legislation should be abandoned in Bengal as Lord Ulick Browne proposes, but—that it should be carried through while reason can make its voice easily heard. There is much similarity between the agrarian condition of Ireland, as I knew it ten years ago, and the condition of these Provinces to-day. In both countries there is the same passionate attachment of the peasantry to the soil, with the same tradition of a right to hold it; in both countries the force of the tradition was impaired or nullified by political causes and by the action of Sale laws; in both countries continuous enhancements of rent led to combinations against high rents among tenants; in both countries these combinations ended in outrages, which necessarily were met with repression. Repression, however, in the East as well as in the West is, by itself, no remedy for evils due to economic causes or bad laws. In Ireland repression was followed by resistance, and ultimately by those reprisals which have shocked the public conscience. We have already had some instances of resistance and some murderous reprisals in Bengal too; but among a docile people we are yet no doubt some way off the extremities to which things went in Ireland. Still the same causes—poverty, insecurity of tenure, and rack-renting—which produced such evil consequences in Ireland are now at work in Bengal among a far denser, if less excitable, population. I do not say that, if neglected, they will *immediately* produce the worst result, because if there are points of likeness between Bengal and Ireland, there are also points of difference. The economic effects of bad laws have not yet driven the people of Bengal into political agitation, though as our system of popular education leavens the masses there are signs that even that danger must be reckoned with. On the political aspect of the case, however, it is unnecessary for me to dwell. My object is to draw attention to the causes at work here, and to the results which these causes must, in my opinion, inevitably produce, if timely preventive measures be not taken. The present condition of things in these Provinces satisfies me that if landlords do not for the future exhibit an abstinence and self-restraint on which it would be unwise to count, or if matters are not now put on some such fair and equitable basis as this Bill proposes, taking nothing from the existing rents of zemindars, nor introducing anything for which there is not ample justification, the time is not far distant when Government must interfere, and when Bengal zemindars, like Irish landlords, must submit to a reduction of their rents and a large curtailment of their privileges. No reduction of rent and no curtailment of reasonable privileges is proposed by this Bill.

16. In stating that the Commissioner of the Rajshahye Division was radically opposed to all the distinctive features of the Bill, perhaps I should make an exception in favour of that provision which provides zemindars with a more speedy and effectual procedure for recovering their rents. It must be admitted, however, that even this procedure does not go far enough to suit the wishes of Lord Ulick Browne, who would apply the summary procedure of the Putni Sale Law to occupancy holdings, under the belief that "this simple and easy remedy (for recovering arrears of rent) would be very acceptable to the zemindars." No doubt it would. But then every Government of Bengal since 1859 that has considered the subject has concluded that to concede the power would be to ruin the province irretrievably. The effect of the power of summary sale granted to zemindars by Regulation VII, 1799, was to compel the ryot to file a regular suit to contest the demand if unfair. When it is remembered that 8,925,000 out of the 9,750,000 ryots in Bengal are so poor that none of them pay a rent exceeding Rs. 20 per annum, it will be understood how true is the remark made in the Statement of Objects and Reasons of Act X of 1859—"to refer a poor cultivator to a regular suit under the present practice of the Courts is almost tantamount to refusing him any remedy at all." That passage expresses the view suggested to the Government by 50 years' experience of the power of summary sale, and I submit that it certainly should deter us from again conferring on any class of the community such a power over the actual cultivator of the soil. Sold out of his holding, the ryot is within measurable distance of pauperism. There are no manufacturing industries to which he might resort, even did caste prejudices permit him to do so. He helps only to swell the growing number of the landless poor, who are in times of scarcity an embarrassment to the Government, and in times of political agitation a source of danger.

With due regard therefore to the opinion of the Commissioner of the Rajshahye Division (which itself, I am bound to say, borrows no great support from the views of any of the Rajshahye Collectors on the Bill, while it is on all points at variance with the opinions of some), I cannot choose but think that on this question the Commissioner's views cannot outweigh that consensus of the most responsible official opinion in favour of the main principles of the measure to which reference has now at some length been made.

Judicial opinion in favour of the main principles of the Bill.

Finally, if the responsible executive officers of Government are mostly in favour of the proposed legislation, the same may be stated of the weight of judicial opinion which has also been elicited. The Judges, of Hooghly, of the 24-Pergunnahs, of Sarun, of Backergunge, of Bhukoora, and the Subordinate Judges of Nuddea and Khoolna, are either entirely or

mostly in favour of the Bill, and if the remaining seven (mostly subordinate) Judges who have been consulted are not so outspoken in their approval, there is none of them who does not find something, while some find in it much, to approve. Their criticisms have been carefully noted, and are being fully considered.

Conclusion.

17. I have now submitted, for the Lieutenant-Governor's consideration, the views which I entertain on the subjects touched on in this memorial. Matters of minute detail I have not specially noticed, but it will, it is hoped, be recognized that no unwillingness has been exhibited to join issue with the memorialists on the essential matter of debate. To sum up, the result of this discussion goes, in my opinion, to prove that the main principles of the measure now before the Council are in entire harmony with the principles of the Permanent Settlement, and with the declarations of successive Governments and of the highest judicial authorities both in India and England; that they are justified by the material condition of the Province, as well as by the relations which exist between landlord and tenant; and finally that they are in themselves fair and just. It has, it is believed, been shown that the proposed legislation is no outcome of hasty or restless administration, but a result of the false relations between zemindars and ryots which have prevailed since the settlement times, and which are distinctly traceable to the rejection by Lord Cornwallis of the policy advocated by Mr. Shore and the most experienced Indian administrators of that day. Expedients, often repeated, having proved futile to correct these false relations, the necessity of remedial action was at last recognized. The growing enlightenment of the cultivating classes, and their determination, expressed in riots and agrarian outrages, no longer to submit to uncontrolled exactions, forced a true perception of the state of affairs upon the Government Action has now been taken, and the Government of India have at length resolved to face the growing difficulties in which the exactions of zemindars and the supineness of past administrations have placed the country. That resolve has certainly, in my humble judgment, not been taken too soon, nor without the fullest justification in the legal relations which subsist between the parties and in the circumstances of the time.

In many estates in these provinces the proposed legislation, if carried into effect, will work no change. It will be in accordance with the facts which good feeling on both sides has created. To such a satisfactory state of things the Lieutenant-Governor has already borne willing testimony. But these well-managed zemindaris are unhappily too few: in every district instances of a different condition of things tax local administrative resources. It is time that an end should be put to this state of growing tension, by the adoption of such definite and workable principles as shall be fair to all parties. This Bill, modified in detail, as there is reason to think it may be modified, provides such principles; and therefore it has justly received the general support of the Bengal Government. I may be permitted to express the hope that, duly modified, it may soon become law; for the entire province is expectant, and there is even already danger of a "no rent" cry being raised in certain districts Therefore in the interests of public peace and order, no avoidable circumstance should now be permitted to retard the final settlement of this question.

A. P. MACDONNELL,

Offg. Secretary, Revenue and General Depts.

BENGAL SECRETARIAT, CALCUTTA;
The 5th January 1884.

No. 3055, dated Calcutta, the 3rd December 1884.

From—C. A. WILKINS, Esq., Officiating Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of Bengal, Revenue Department.

I AM directed to acknowledge the receipt of Mr. Risley's letter No 1925—1008LR, dated the 28th ultimo, and the reply to forward, as requested by His Honor the Lieutenant-Governor, a copy of Sir Richard Garth's minute dated the 13th September 1884, on the Bengal Tenancy Bill, 1884.

THE BENGAL TENANCY BILL, 1884.

IF I were to consult my own wishes, without regard to what I consider to be my duty to the public, I should decline to offer any further advice to the Government with reference to the Bengal Rent Bill.

But the measure appears to me to be one of such vital importance to the agricultural community, which forms the mass of the population of this Province, that I feel, in justice to them, that I ought to say what I think about it.

It is a great satisfaction to me that my good friend Mr. Justice Field, who has made the land laws in this and other countries his peculiar study, and who is probably as well acquainted with the Bengal Rent Law as any living man, has addressed the Government so fully upon the subject.

I could wish that every Judge of the Court had done the same. The Civilian Judges, especially, who have had a large experience in the Mofussil, besides that which they have

gained in the High Court, might, I believe, have given the Government the most valuable assistance; and my learned colleague, Mr. Justice Mitter, who is also a thorough master of the subject, would, I am sure, have done good service to his countrymen by affording to the Government the benefit of his knowledge and experience.

But we can hardly be surprised, in the present state of things, that any Judge of the High Court should hesitate to advise the Legislature upon this or any other subject, when his advice is likely to be opposed to the wishes of the Government.

There was a time when the opinions of High Court Judges, however adverse they might be to those of the Government, were invariably treated with respect. I am sorry to say this is not so now.

I feel this so painfully, and I consider that the interests of the public are likely to be so seriously affected by it, that I cannot help taking this opportunity of saying a few words upon the subject, more especially as it is in some sort connected with the Bill which I am about to discuss.

Since His Excellency the present Viceroy arrived in this country, there have been two principal measures, which have excited a more than usual amount of public interest and attention. One of these is the Rent Law, now under consideration, and the other what is generally known as the "Ilbert Bill."

Upon both these measures the Judges of the High Court have been consulted by the Government.

They were first consulted upon the Rent Bill in March 1881, when it was in the form usually known as "Mr. Reynolds' Bill." They were again consulted upon it in March 1883, when it had been amended under the orders of the Secretary of State. And they have now been consulted upon it for the third time, in the shape that it has assumed under the hands of the Select Committee.

I suppose that there hardly ever was a measure, which has undergone from time to time more numerous and important changes, than this Bill. I had twice nearly completed what I wished to say upon it in 1882, when, in consequence of these changes, I was obliged to commence my labours afresh.

At length, however, I completed a Minute, and submitted it officially to the Government of India as well as the Government of Bengal in October of that year. I was of opinion, and did my best to explain, that the Bill was in great measure unwise and uncalled for; that its effect would be to deprive the zemindars of the rights and position which they had acquired under the Permanent Settlement; that it would be productive in many ways of injustice and litigation; and above all, that it would do more harm than good to the class of persons whom it was specially designed to benefit, namely, the cultivating ryots.

Whether I was right or wrong in this view of the matter, is a question which still remains to be solved. Suffice it for my present purpose to say that I gave the Government the best advice I could. I had studied the subject with a great deal of care and attention; and although I was quite aware that my views were opposed to those of Government, they were at least, I need hardly say, thoroughly honest and disinterested.

No sooner, however, was this Minute published, than a most bitter and scurrilous libel, in connection with it, was circulated by one of the Secretaries to the Government of India, who had been an active member of the Rent Commission, and who had advocated some of the views which the Bill was intended to carry out.

This libel will, of course, be in His Excellency's recollection. It was commented upon very freely in the public papers, and, so far as I can judge from those comments (for I never read the libel itself) it consisted for the most part of a succession of personal attacks upon myself, imputing to me not only gross ignorance and incapacity, but even a want of good faith in the advice which I had given to the Government.

Now, if this were a matter which merely concerned myself, I should not have thought it worthy of remark. I took no notice of it at the time; I was by no means desirous of inflicting upon the author a heavier penalty than he had brought upon himself; and I was still less desirous of placing Lord Ripon in a difficulty, which I believe I should have done if I had called his attention publicly to the subject.

But the matter is not one which merely concerns myself. Its real importance and significance, especially having regard to what has since occurred, seems to me to consist, not in the libel itself, but in the fact that the Government allowed it to be published, under these circumstances, without the slightest sign of disapproval.

I was asked to advise the Government upon a legislative measure. I advise them to the best of my ability. My advice was strongly opposed to the Government policy; and forthwith this libel was printed, at the Government Press, by one of the Government Secretaries, and although marked "private" was circulated freely amongst some of the highest officials, without any rebuke or apparent disapprobation on the part of the Government.

Let us now see what happened on the occasion of the Ilbert Bill.

The Judges were asked in the month of May of last year to give the Government their views upon that Bill. And they accordingly did their best to explain them in a letter dated the 23rd May 1883, which contained the unanimous opinion of the European members of the Court.

If this document had no other merit, it was at least a faithful exposition of what we believed to be the truth

Our advice was asked *as Judges of the High Court*; and we gave it *in that capacity, and in no other*: and yet so little respect is shown to us or our opinion, that Lord Hartington, the late Secretary of State for India, well knowing that our advice had been asked by the Indian Government, denounced our minute publicly in the House of Commons, "*as not being invested with any judicial authority, but rather as the offspring of partisanship.*"

Now it is perfectly true that at the time when Lord Hartington used these words, he had ceased to fill the office of Secretary of State for India. But it is equally true that the Ilbert Bill had been brought forward under his auspices, at a time when he did fill that office, and that it was in defending his own policy and that of the Government of India, that he thought fit to insult the Judges in these terms.

Here, again, the Government of India, when their attention is called to the subject, receive our remonstrance in silence; and, for aught that we know to the contrary, are perfectly content that we should be thus insulted.

This is the treatment to which Judges of the High Court are now subjected, when the views which they think it right to express are opposed to the Government policy.

When our views are in accord with the Government policy, the treatment we receive is very different. I have myself, before now, been fortunate enough to approve of Government measures; and my advice has then been not only received with gratitude, but referred to in the Council Chamber with the utmost respect.

Now I cannot help thinking that in the interests of the public (entirely without regard to what may be the feelings of the Judges), this mode of dealing with the advice of the High Court upon matters of deep concern to the State is open to grave objection.

I believe there is no country in the world, in which the Government, and especially the Legislative branch of it, is more dependent upon its officers, both executive and judicial, for information and advice, than it is in British India.

In measures which involve any material changes of the substantive law, I believe it would be difficult, if not impossible, for the Legislature to proceed safely without first consulting the High Courts. As a matter of fact, those Courts always are consulted upon measures of that kind. And I do most respectfully submit to His Excellency that it does not tend to encourage honest advice, or indeed any advice at all, from the Judges, nor to improve the confidential relations which ought to exist between the High Courts and the Government, if, when their views are opposed to the Government policy, they are to be treated with open disrespect.

There has always, since I have been in Calcutta, been some difference of opinion amongst the members of the Court, as to how far it is the duty of the Judges to advise the Government upon legislative measures. Whether it is our duty or not, I have always myself endeavoured to give them the best advice I could; and so long as His Excellency is pleased to ask my advice, I shall continue, so far as my time and other duties allow me, to give it

But I cannot help thinking that it would be better for the Government not to consult us at all, unless they really desire to have our honest advice; and I think, moreover, that it is hardly fair to consult us if our advice is to be received with favour or disfavour, as it may be more or less in accord with the Government policy.

Introductory.

I now proceed to discuss the subject of the present Rent Bill; and I must preface my remarks by saying that in the main the opinions which I expressed in my former Minute of 1882 remain unchanged.

In some few respects I think the Bill has been improved; but on the whole, I regret to say I consider that the alterations which have been made are not for the better.

There are two very remarkable features about the Bill, both of which have been observed upon, and as it seems to me, with truth, in the protest of the late lamented member of the Select Committee, the Hon'ble Kristo Das Pal.

One is, that notwithstanding the many differences of opinion which arose in the course of the controversy, upon what were obviously questions of fact, no witnesses were examined before the Select Committee except a few zemindars, upon the subject of subletting.

It is true that the rules by which the Select Committee were governed did not admit of the examination of witnesses. But why should that be the rule? This is just one of those cases which shows how necessary it is, in order to obtain proper materials for the purpose of legislation in India, to appoint Select Committees with power to take evidence as is constantly done in the House of Commons.

When a measure, which involves disputed questions of fact, comes before the House of Commons, it is constantly referred to a Select Committee; and the very best evidence that can be procured is examined before that Committee upon both sides of the question. It is surely only just that a tribunal of that kind should be constituted here. A Committee composed of an equal number of gentlemen on either side of the question, with a Chairman selected for his moderation and fairness, would, I believe, give more satisfaction and confidence to the public than any number of Select Committees, such as that which was constituted in this instance.

The large majority of that Committee were entirely in favour of the main principles involved in the Bill; and it was hardly likely that the great body of agriculturists, who were so deeply interested in the matter, who had held crowded meetings all over the

country, and sent up to the Government the most earnest memorials, should have been satisfied with a discussion, where the native gentlemen who represented their views were completely overborne by numbers.

I heartily wish, in common, I believe, with thousands of others, that Committees such as I have suggested were appointed in this country.

The other remarkable feature about the Bill, to which also the Hon'ble Kristo Das Pal alluded, is that although it professes to restore the ancient and customary law of Bengal, there is hardly a single particular in which that principle is adhered to.

In paragraph 38 of the despatch from the Government of India to the Secretary of State, dated the 21st March 1883, we find two main proposals, which had been made by the Government of Bengal to the Government of India, embodying the leading principles upon which, in the opinion of Sir Ashley Eden, the new Rent Law ought to be based.

Those proposals were—

1*stly*, that the great body of cultivators should be restored to the position which they held under the ancient land law and custom of the country; and

2*ndly*, that the beneficial interest of the settled ryots, who formed the mass of the cultivating classes of Bengal, should be determined by authoritatively establishing renewed or revised rates on a system analogous to that of the old pargana rates.

The spirit of these proposals was approved at that time by the Government of India as well as by the Secretary of State; and although in paragraph 108 of the despatch their spirit was to some extent departed from, yet still there were two intelligible principles to work upon, which showed what Sir Ashley Eden's intentions were, and of which, if they had only been carried out fairly, the zemindars might have had no reason to complain.

I would now invite attention to the provisions of the present Bill, and I would ask whether any reasonable man, looking at those provisions, can say that the principles which I have mentioned have been adhered to with even tolerable fairness.

It seems to me that at least three-fourths of the provisions of the Bill are entirely inconsistent with the rights, both of the cultivators and of the zemindars, at the time of the Permanent Settlement.

I would ask, how many of the provisions contained in chapters II, III, IV, V, VI, VII, VIII, IX, X, XII, XIII, XV, XVI, XVII, or XIX were ever known or thought of in the year 1793?

Whatever Sir Ashley Eden's original intentions may have been, it seems to me that the principles which he laid down have been virtually ignored.

It will be observed that from the category of chapters which I have above enumerated, I have omitted chapter XI. I agree that it is most desirable, although no doubt very difficult, to devise some effectual means of reviving the old pargana rates. I sincerely hope that what is proposed in this chapter will be a success. I know so little of that branch of the subject, that I will not presume to give my opinion upon it. But I fully believe that if it only works fairly well, it will be an improvement upon the present state of things.

And now, as to the Bill itself, I regret that I have neither the time nor the knowledge to deal with it in detail, as Mr. Justice Field has done.

I propose to confine myself at present to certain salient points, which are within the range of my own knowledge and experience, and which appear to me to be especially deserving of the consideration of the Legislature.

Government not bound by the provisions of the Bill.

The first point, to which I desire to call attention, is that the Government do not appear to be bound in any way by the provisions of the Bill.

The rule is that the Crown is never bound by an Act of the Legislature, unless it is expressly named; and I find no definition or expression in this Bill, which extends its operation to the Crown.

Now why should this be? The Government are some of the largest landlords in Bengal. They hold a vast number of estates in their own hands, which they have not been able to settle with zemindars; and they also hold a number of estates, which belong either to minors or lunatics, in their character of the Court of Wards.

The tenants and ryots upon those estates are entitled, I presume, to as much consideration as the tenants and ryots of ordinary landlords; and if it is right to protect the latter by the stringent rules and conditions which are contained in this Bill, it seems also right to protect the former in the same way

Let us refer once again to the avowed principles upon which the Bill was originally based.

The object of it was to *restore the tenantry to the position which they occupied at the time of the Permanent Settlement.* If it is just to restore the tenantry to this position on estates held by ordinary landlords, is it not equally just to restore them to that position on estates which are in the hands of Government?

A case, or rather a batch of cases, which has lately come before the High Court on appeal, tends to illustrate, in a very remarkable way, the extraordinary powers which the Government possess over their tenants in this province, and the severity with which those powers may be exercised.

The facts will speak for themselves.

There is a very old family of zemindars in the district of Midnapore, who have been the "maliks," or proprietors, of some large estates there, called the Jellamutta estates, for upwards of a century.

These estates consist of 13 parganas; but only three of them have been permanently settled, because the terms offered by the Government for a permanent settlement of the other 10 parganas were higher than the zemindars could prudently accept; and consequently those 10 estates have been settled by the Government from time to time upon temporary settlements, either with the zemindars or with strangers; and sometimes they have not been settled at all, but have been taken by the Government into their own hands.

When the Government takes possession of an estate under such circumstances, or settles it for a time with strangers, it is customary to allow the zemindars a certain share or percentage of the profits, which is called *malikana*.

And as each succeeding settlement comes to an end, or when, after the expiration of a settlement, the Government thinks the circumstances will warrant an increase in the rental, they are in the habit of making a fresh estimate of the rents which each tenant or ryot upon the estate ought to pay, and then offering to settle it, first with the zemindars, and then, if they so please, with other persons, at a revenue proportionate to that estimate.

The last estimate of this kind made upon the estates in question was in the year 1877. The Government had undoubtedly since 1840 carried out some expensive embankments along the coast, in order to keep out the saltwater. But these benefits were common to the district, and not confined to the estates in question.

The new estimate of the rental was, however, so largely out of proportion to the rents which had been previously paid, that it at once gave rise to the utmost consternation.

The ryots were almost all admittedly occupancy ryots, described as old khudkasht ryots in the settlement of 1845.

The rents had been raised by this estimate in very many cases to 50, 100, and 150 per cent beyond what had been paid before; and in some instances as high as 200 and even 300 per cent.

The average increase expected was about 63 per cent.; and the result was that in one comparatively small estate, the rental of about 6,000 ryots was raised from Rs. 43,000 to Rs. 73,000.

This estimate having been made, the Government proposed to the zemindar to take a settlement on the basis of it. But the zemindar declined the proposal. He was as much startled as the tenants at the severity of the enhancement; and he knew that it would be utterly out of the question for him to attempt to realize from the tenants anything like the amount.

A settlement therefore having been found impossible on these terms, the Government resolved to take the estates into their own hands, rather than reduce the assessment to any sum which the zemindar could enforce by law.

It appears from the Administration Reports that the whole 75,000 ryots on the estates repudiated the settlement; and that the Government in one year issued 25,000 Collectors' certificates against them, and proceeded to execution and sale. These certificates are summary proceedings taken under the Public Demands Act (Act VII of 1880, B C), by which a mere certificate recorded *ex-parte* by the Collector, that a sum of money is due from any person for a public demand, is capable of execution as a decree.

The only remedy for the person against whom such a certificate is made is by a regular suit in Court, to recover the money from the Government by proving that it was not due. The suits of ryots on estates held or managed by the Government are considered to be public demands within the meaning of this Act.

It now becomes necessary to explain the state of the law which regulated at that time the enhancement of tenants' rents on estates in the hands of Government.

The earliest statute upon that subject is Regulation VII of 1822, under which the settlement officer was at liberty to enhance the rents of the tenants and ryots upon such estates (other than those holding at fixed rates) up to any amount he thought proper, subject only to the sanction of the Board of Revenue.

This arbitrary power had been in great measure controlled by the Rent Law of 1859, under which (in the case at least of occupancy ryots) it became necessary for the Government, as it was for other landlords, to specify and prove in each case the ground upon which the rents were sought to be enhanced; and the provisions of this Act of 1859 were afterwards continued by the Act of 1869.

This was the state of the law at the time when the rental estimate, which I have mentioned, was made upon the estates in question; and having regard to the temper of the ryots, the Government saw very plainly that in the teeth of that law it would be impossible for them to realise from the tenants anything like the estimated rental.

They determined, therefore, to have recourse to some legislative measure, which would remove, or tend to remove, their difficulties. And accordingly Act III of 1878 (B.C.), which was introduced in that year, in effect provided that where, in the course of any settlement proceedings under Regulation VII of 1822, a higher rent had been recorded by the Government, as demandable from any tenant or ryot, than had been previously paid by him, such rent should be *deemed to have been correctly enhanced, until the contrary was proved:* and there was a further provision that any suit which might be brought by a tenant or ryot to contest the correctness of the enhanced rent *should be brought within four months of a notice of enhancement.*

After this Act was passed, the Board confirmed the settlement of 1877; but it was found that it would still be necessary to specify in the notices of enhancement not only the particular occupancy holding to be enhanced, but also the old rent and the reasons why Government contended that the enhanced rent was demandable in each case; and it was feared that some trouble would be caused to Government by having to go into these details, and that the enhancement could not be enforced even with the aid of Act III of 1878.

Accordingly in 1879 Act VIII of that year (B.C.) was passed, with retrospective effect upon all settlements confirmed by the Government after the passing of Act III of 1878. This Act (which was substituted for Act III of 1878) contained (in addition to throwing the onus on the ryot) provisions enabling the Government to publish a rent-roll or jummabundi of a whole estate with certain formalities, and provided that the amount of rent recorded against each ryot should be payable by him, unless by a suit instituted within four months from the publication of the rent-roll he should prove that the rent had not been assessed in accordance with the Act.

This Act was made retrospective, *for the very purpose of legalising ex post facto the enhancement which had been made on the estates in question*, and throwing upon the tenants and ryots in all cases the burthen of proving that the estimated rent recorded against them was incorrect. In fact, instead of the onus of proof being thrown upon the Government, to show that their enhancement was correct, this Act threw upon the tenants the onus of proving that it was wrong; and it obliged the tenants to bring their suits to try the correctness of the estimate within the short period of four months from the time when this notice of it was given in the village.

No doubt this short limitation and the ignorance of the great majority of the ryots of the change which had thus suddenly been made in the law, prevented a good many of them from contesting the enhancement. But no less than 2,654 suits were nevertheless brought against the Government for that purpose.

Having brought these suits, it was necessary, of course, for the tenants to ascertain the grounds upon which their rents had been enhanced; because, the onus being upon them to prove that the enhancement was improper, it was impossible to launch their cases, without knowing upon what grounds the enhancement had been made.

But this was very difficult, because the Government had not given any particular grounds in respect of particular holdings, but had in their notice claimed to assess all the ryots on all possible grounds, and thus imposed on them the burthen of proving the negative of each of those gounds.

The Government also attempted practically to cut down the four months allowed for suing to two, by objecting that no suit could be instituted against the Secretary of State without two months' notice under section 424 of the Civil Procedure Code; and they insisted also, that such notice should specify the grounds of the action in detail.

Many of the ryots served their notices on the Collector, but the Collector declined in his written statement to admit or deny the receipt of those notices, and put the ryots to strict proof of them. He was, however, compelled to produce these notices in the course of the trial.

The consequence of these overwhelming difficulties thrown in the way of the tenants was, that in a large number of suits the ryots were literally helpless. They knew not upon what grounds their individual rents had been raised; and as the Government refused to give them any information, the Munsiff who tried their cases decided that they had not proved that the enhancement was improper, and dismissed all the cases, with extra costs for having interrogated the Collector.

The Judge on appeal set aside the enhanced rents upon ponds dug by the ryots themselves, and upon homestead lands, but declined to interfere with the rest of the enhancement.

A good many of these decisions have been appealed by the ryots to the High Court upon points of law; and the result of the appeals is not yet known; but that result is unimportant for my present purpose.

Now here is a very remarkable history, which tells its own tale too plainly to need any comment. This same Government, which takes these large estates out of the hands of the zemindar, in order to impose upon the ryots this extraordinary enhancement, and which, for the purpose of enforcing that enhancement, passes two retrospective Acts, which virtually render it impossible for the ryots to resist the imposition,—this same Government, I say, is endeavouring by this Bill, in the case of permanently-settled zemindars and other landlords, to restrict the enhancement of rents to 25 per cent., and to allow that enhancement only on certain specified grounds, which grounds must be strictly proved by the landlords before any enhancement can be made.

Now why should this be? The tenants and ryots are surely entitled to the same rights and to the same consideration, whether their landlord for the time being, is the Government or a permanently-settled zemindar, or a temporarily-settled zemindar. Government officers may make mistakes like other people; and they are probably not less likely to make mistakes because they are unfettered by the control of the law.

For myself, I fail to see the slightest reason why the Government, when they are in the position of landlords, either by taking revenue-paying estates into their own possession, or managing the property of minors and insane persons in the character of the Court of Wards should not be placed under the same wholesome restrictions with regard to the exercise of their powers, as any other landlords.

It seems to me a most fortunate thing, in the interest of justice and of the Bengal tenantry, that the facts of this Jellamatta settlement should have been brought before the public while the Rent Law is under discussion.

I am one of those who consider that the powers of Government over their tenants should not be greater than those of other landlords. And I think, moreover, that the certificate system, by which the mere fact of a Government officer recording a debt against a person behind his back is made equivalent to a decree against that person so as to subject him to execution, without his having had any opportunity of answering the claim, is cruelly unjust.

The Government, as it seems to me, ought to be bound to prove their claims against tenants or any other debtors; and if the discussion of the Rent Bill should bring about any wholesome reform in that respect, it will be attended, in my opinion, with at least one good result.

Section 3 (7).

The next point which I wish to observe upon, and which I consider of great importance, is that the various kinds of tenancies should be properly defined.

I see that in the report of the Committee they say that they do not consider it expedient to attempt any such definitions. But considering that this new law would have the effect of readjusting the whole system of agrarian holdings, it seems to me that the great aim which the Legislature ought to have in view is to prevent, as far as possible, confusion and uncertainty in the future.

They are proposing to deprive landlords of a number of rights and privileges which they have hitherto possessed; they are conferring rights upon tenants which they have never yet enjoyed, and changing the status and relations which these different classes of agriculturists are to occupy in the future. It seems to me, therefore, that in justice to the agriculturists themselves, and to prevent confusion and uncertainty, the least they can do is to define as nearly as may be what a tenure-holder or a ryot is according to their own view of his position; and I think it would be extremely hard to impose that burden upon a number of judicial officers the large majority of whom disapprove of the proposed changes, and probably, like myself, are unable to comprehend the principles upon which they are based.

Section 5.

Having said this much, and in the hope that in this respect the Bill, if it is to pass, may be reconsidered and amended by the Legislature, I will just notice in passing how misleading and inaccurate the description of a tenure-holder is in this section.

A tenure-holder is described as a person who has acquired from a proprietor or from another tenure-holder the right to collect rents.

Now it seems to me that it would be just as correct to describe a tradesman, who has bought a shop, as a person who has acquired *a right to collect debts*, as it is to describe a tenure-holder as one who has acquired *a right to collect rents*.

It may be generally true of tenure-holders that they have a right to collect rents, because most of them have tenants [introduced either by themselves or others] by whom rents are payable.

But it is by no means of the essence of a tenure-holder's interest that he should have a right to collect rents, and still less that he should have acquired that right from his immediate landlord.

His right to collect rents is merely one of the incidents of his position when his land is let to tenants; as it is one of the incidents of a tradesman's position that he has a right to collect debts when he has customers from whom they are due.

A more correct description of a tenure-holder would be "one who holds a tenure, mediately or immediately, under a proprietor, and who is not himself a ryot." But this of course leaves the important question open—what is a ryot? and what is the true distinction between a ryot and a tenure-holder?

The description which I have suggested is correct as far as it goes; and it is at any rate not calculated to mislead; whereas the description proposed in this section would be wholly inappropriate to a large class of tenure-holders.

Suppose, for instance, that a settlement were made with a zemindar at the present day of a tract of waste in the Sunderbuns. I have now before me a grant of this kind, which was made very lately. Such a proprietor would be at liberty to grant any leases he may think proper of any portions of that tract.

He may grant mokurrari leases, either permanent or for life; he may grant putni leases, or jungleburi-tenures; and in each of these cases, the object for which he makes the grant, and the object of the lessee in taking it, would probably be the cultivation of the soil.

But each of these grantees would be at liberty (subject, of course, to any special conditions which his lease may contain,) to cultivate or not, as may suit his convenience; and each would be at liberty to grant his land for sub-tenures, or to let it out to ryots, or to cultivate it himself with his own coolies. But whether he does one thing or the other, I take it he would be equally a tenure-holder, and that any ryots, to whom he lets the soil for purposes of cultivation, would be capable of acquiring occupancy rights.

And yet to describe any one of these grantees "as a person who has acquired from the proprietor a right to collect rents" would be a manifest misdescription.

The truth is that each successive tenure-holder is to all intents and purposes as much an owner of the soil, to the extent of the interest which he acquires in it, as a tenant of land in England.

He is of course bound, as every tenant is, by the conditions which are imposed upon him, either by the general law, or by custom having the force of law, or by the contract which he makes, with his superior landlord on the one hand, or his sub-tenants on the other; but subject to those conditions he may deal with the land as he pleases.

If when he acquires his tenure the land is occupied by ryots, he can of course only deal with those ryots as the law, or the contracts under which they hold, allows him; but if the land is waste or partly waste, when he acquires it, he may either leave it so, or utilize it in any way he thinks proper.

It seems to me, therefore, that the description of a tenure-holder in this section is utterly misleading. It may no doubt be a difficulty to define the line which is to separate the two great classes of "tenure-holders" and "ryots." But I think it is a duty which the Legislature should take upon themselves, even though they may perform it imperfectly, rather than to place several hundred judicial officers in a difficulty which they may each attempt to solve in a different way.

Section 26.

I might with reason congratulate the zemindars that the Secretary of State had retained the 12 years' occupancy rule, if the effect of his decision had not been rendered almost nugatory by sub-section 2 of section 26.

It may be interesting to review shortly the history of this question, since the amendment of the Rent Law was first proposed in 1879.

By the present law a ryot can only earn his occupancy right by renting his land for 12 successive years.

The Committee of 1879 recommended an alteration of this rule; and by the Bill which was prepared by the Government of Bengal, it was proposed that a three years' occupation, instead of 12, should be sufficient to acquire the right.

I believe that the Government of India were in favour of a still shorter period. But be this as may be, the Secretary of State in Council, after much consideration, determined that the 12 years' rule should be adhered to.

The Government of India were dissatisfied with that decision, and begged the Secretary of State to reconsider it. But notwithstanding this protest the Secretary of State would not alter his decision.

Accordingly, by the amended Bill, which was framed in the year 1883, the 12 years' rule was re-enacted. But by the same Bill the penalty imposed upon a landlord for ejecting a non-occupancy ryot was made so cruelly severe that it virtually would have given all ryots the occupancy right, and so have neutralized the decision of the Secretary of State.

This was pointed out very forcibly by several gentlemen who were consulted upon the Bill, and the penalty clause was consequently withdrawn.

Now again, by section 26 of the present Bill, the 12 years' rule is re-enacted. But we find in connection with it sub-section (2), which will be at least as effectual in neutralizing the 12 years' rule as the penalty clause which was withdrawn.

That sub-section provides that, *instead of a ryot acquiring his occupancy right by a* 12 *years' occupation of his land, the law is to presume that he has acquired it*, and the presumption is to be made under such circumstances that in the great majority of cases it will be practically impossible for any landlord to rebut it.

Whatever, therefore, the intention of the Legislature may have been in framing this sub-section, it is certain that the rule which it lays down will defeat the wishes of the Secretary of State, and its effect will be to place landholders in an infinitely worse position than if the proposed three years' rule had been accepted.

Now, here I would ask, why should the Select Committee have gone out of their way to lay down a rule, in violation of all the principles of evidence, in favour of the ryot and to the prejudice of the landlord?

One leading rule in such cases, which is substantially adopted in section 101 of the Indian Evidence Act, is this:—

See Taylor on evidence, section 368.

"The burthen of proof lies on the party, who substantially asserts the affirmative of the issue."

And this accords with the rule of the civil law, "*Ei incumbit probatio, qui dicit, non qui negat.*"

And another rule of evidence which is equally well known is this—

See section 103 of the Evidence Act.

"Where any fact is especially within the knowledge of any person, the burthen of proving that fact is upon him."

The justice and good sense of these rules must be apparent even to those who know nothing of law; and one looks therefore for some explanation why the Select Committee, in this instance, should have so completely reversed it. I suppose we may consider that the explanation, such as it is, is given in the following passage of the Committee's Report.

Speaking of the presumption which is proposed by that sub-section, the Committee say—

"It (that is, the presumption) appears to be warranted by the existing state of things in the Lower Provinces, and whilst it tends to simplify litigation, it is a presumption, which a landlord ought to have no difficulty in rebutting, in any case in which it does not hold good."

We are not informed what the state of things is in the Lower Provinces, which is supposed to justify such a departure from the established rules of evidence; but I presume the reason is, that because the large majority of ryots in the Lower Provinces have already rights of occupancy, it is fair to presume, as against landlords, that all ryots have the right of occupancy until the contrary appears.

If so, I suppose upon the same principle it would be equally fair to presume that in any part of the country where putni leases are the prevailing form of tenure, all tenure-holders are putnidars until the contrary appears.

Or to bring the illustration nearer home, I believe that most of the large houses in Calcutta are let upon a four years' lease. If so, it would be fair to presume upon the same principle, as against the owners of houses, that every tenant in Calcutta who occupies a large house has a four years' lease.

There are several parts of England, where tenant-farmers as a rule have leases for seven or fourteen years. I wonder what landlords there would say to a presumption of law that every tenant in those parts of the country had a lease for seven or fourteen years—!

The truth is that any presumption against a proprietor, that a tenant of his *has acquired as against him a permanent right or tenure*, is an obvious injustice.

And it becomes a still greater injustice, when according to law *the only way in which a tenant can earn or acquire such a right is by an act of his own.* Why should it be presumed as against a landlord that his tenant has done an act which is to confer a benefit upon himself to the prejudice of his landlord?

And again, when we look at the facility which the tenant has of proving this right, as compared with the difficulty which a landlord has in disproving it, the injustice becomes still more glaring.

To the ryot himself it should be a very easy matter to prove, if the fact is so, that he or his father, or the person under whom he claims, has occupied land for so many years.

It must be a matter within his own knowledge, or that of his family and his neighbours, and no one (as a rule) can be so capable as himself of proving it.

To the landlord, on the contrary, it might, and would in the great majority of cases, be a task of the greatest difficulty to prove the negative of the proposition. I really can hardly believe that the gentlemen who constituted the Select Committee could have considered the difficulty in which a landlord would be placed, when they proposed this sub-section.

Let us take a case by way of illustration, and see what a landlord under such circumstance would have to prove.

We must bear in mind that by sub-section (3) of the same section a person is to be deemed, for the purposes of that section, to have held land continuously in a village or state, *notwithstanding that the particular land held by him has been different at different times* in such village or estate.

And we must also bear in mind that by section 27, sub-section (b), "where two or more estates have been created by one or more partitions taking place, whether before or after the commencement of the Act, but since the 1st day of January 1853, the area comprised in the parent estate, of which they would have formed part, if no such partition had taken place, shall be deemed to be a single estate."

Now we will suppose an estate to have been partitioned between ten different shareholders in the year 1870; and that a ryot is found occupying a piece of land in one of the partitioned portions in the year 1884.

A question arises between him and his landlord whether he has an occupancy right in the land which he holds; and an issue having been raised upon that point, the presumption according to section 26 is in favour of the ryot.

The ryot therefore at the trial *says nothing*, and *does nothing*; but leaves it to the landlords to prove the negative of the proposition.

Now what has the landlord to do in order to rebut the presumption?

He must first call his own patwaris or gomasthas to prove that the ryot or those under whom he claims have not occupied the particular piece of land in question for 12 years. But that proof would not be enough; because although the ryot, or those under whom he claims, may not have occupied the piece of land in question for 12 years, they may have occupied some other land or lands on the same portion of the estate; and if so, that would answer the ryot's purpose quite as well as if he or his predecessors had occupied the land in question.

So the landlord must proceed to call every patwari or gomastha upon his portion of the estate (which may consist perhaps of 3,000 or 4,000 acres) to prove negatively that the ryot, or those under whom he claims, have not occupied any land in any portion of the estate for the last 12 years.

But even that proof would not nearly suffice in the case which I have supposed; because as the parent estate was partitioned in 1870, the landlord must needs go on to show that the ryot has not occupied, during the last 12 years, any land *in any of the other nine partitioned portions of the parent estate.*

He would therefore have to call all the persons who have acted as patwaris or gomasthas in all the other nine portions of the parent estate during the last 12 years.

Some of these would most probably be hostile to his interests; and unless all these people prove to the satisfaction of the Court the negative proposition, *that the ryot has not occupied any land on any portion of the parent estate for the full period of* 12 *years*, the presumption in favour of the tenant's right of occupancy will prevail.

It seems to me that to place landlords deliberately in such a difficulty as this would be a cruel injustice. The time occupied, and the expense involved, in a trial of this kind, would be out of all proportion to its importance; and this burthen is to be thrown upon the landlord, directly in opposition to the ordinary rules of evidence, merely for the purpose of relieving the ryot from proving a case which, if it is an honest one, he ought to be able to establish without the least difficulty.

The ryot, as a rule, must know perfectly well where he and his forefathers have lived; and if they have changed their residence he or his family or his neighbours ought to know best how to prove it.

I repeat, that if sub-sections 2 and 3 of section 26 are to become the law of the land, the decision of the Secretary of State as regards the 12 years' rule will become a dead letter.

Sections 37 *and* 38.

I have not the least doubt that these sections, which are designed for the purpose of preventing subletting, have been proposed with the very best intentions. But I cannot but think that they are unwise, and I am satisfied that they will lead to a torrent of litigation.

I have already expressed my opinion that one great aim of this Bill, if it is to become law at all, should be to distinguish the various kinds of agricultural holdings, so as to prevent confusion in the future; whereas these sections, as it seems to me, a fraught with confusion and uncertainty.

It may be doubtful, as the Bill now stands, whether the occupancy ryot himself will gain or lose by becoming a tenure-holder.

He would free himself, by becoming a tenure-holder, from the law of pre-emption and distraint; but on the other hand, he would not have the power over his tenants, as he would if he were an occupancy ryot.

Whatever his own interest may be, however, it will clearly be the interest of his tenants to make him a tenure-holder if they can; because they may then gain occupancy rights under him, and secure themselves other privileges which as sub-ryots they do not possess.

There will therefore be perpetual disputes upon this point. The occupancy ryot, if he chooses to retain that status, and yet does not wish to cultivate the land himself, will endeavour to prevent the arrangements which he makes with his cultivators, coming within the category of sublettings.

If he makes his bargains cleverly with these people, it will be difficult for any Court to say whether the cultivators are *servants* or *sub-tenants*.

He may allow them to cultivate his land, and give them a portion of the produce as wages; or he may pay them a sum by way of wages, and take a portion of the crop as his share, leaving them the rest.

Then the provisos in these sections will give rise to interminable differences.

Are women, on account of their sex, to be allowed to under-let the whole of their jotes, without becoming tenure-holders? If so, a man who acquires such a jote will acquire it in his wife's name.

Is a woman to be considered disabled merely because she is a woman? And at what age is a man to be considered disabled? Some men may be disabled at 50, whilst others can work perfectly well at 70. It will be very difficult for any Court to decide whether a man is really disabled.

And so with regard to illness, what amount of bodily ailment or infirmity is to be a sufficient excuse for a man's under-letting? Doctors' certificates, specially those of native doctors, are in my experience very easily procurable.

Again, suppose that a man absent from home on military or domestic service lets the whole of his jote to sub-tenants, and when he returns, takes immediate steps to put an end to their sub-tenancies—How long is he to be allowed for this purpose? Is he liable to be registered as a tenure-holder as soon as he returns home, or will he have a reasonable time to determine his tenants' interests? And if the latter, what will be a reasonable time? The questions which will arise under these provisos will be endless, and the result, I am satisfied, will be constant litigation.

I quite agree with Mr. Field and many others that it would be an excellent thing to prevent subletting; but I don't quite see how it is to be prevented.

Transferability of occupancy tenures.

As regards the transferablity of occupancy tenures, I have already said a good deal in my former minute, and I am still of the same opinion as I was then.

It is admitted that occupancy tenures were not transferable at the time of the Permanent Settlement, and the only arguments which are advanced now in favour of the right of transfer are—

1st.—that the custom of transferring tenures has become much more general of late years; and

2nd—That if the right of transfer were allowed, it would render occupancy rights more valuable.

With regard to the first of these arguments, it may be true that in some districts the customary right of transfer has become more general; but that only means that in those districts the landlords have either openly permitted transfers, or at any rate have allowed the practice to continue unchecked during a long course of years.

But no one goes so far as to deny that the landlords in these districts had a right to prevent the practice, if they had chosen to do so, and if so, it is difficult to see why other landlords, who have adhered to and protected their rights, should now be arbitrarily deprived of them.

This is only another illustration of the way in which the law has been strained in favour of the ryot, and to the prejudice of the landlord, entirely regardless of what was the state of things at the time of the Permanent Settlement.

As regards the second argument, I quite admit that to make the occupancy-right saleable would increase its value in the market. But it does not at all follow that this will be beneficial to the ryot himself. On the contrary, I consider that there is no surer mode of exterminating occupancy-ryots as a class than by permitting them to transfer their tenures; and I believe it would be found, on enquiry, that in those districts where occupancy-rights have become transferable by custom, a large portion of them have already found their way into the hands of mahajans, planters, and others, whilst the original owners of those tenures have become non-occupancy ryots.

If the Government really mean to benefit the occupancy-ryot, let them take every possible means of preventing him from ruining himself by parting with his ancestral jotes, and becoming the prey of those whose interest it is to deprive him of his status and property.

The men who are most interested in making occupancy-rights transferable are land-jobbers, mahajans, and above all, so far as I can understand, planters. So long as a planter can make himself complete master of the soil without actually cultivating it himself, he cares not whether the position which he occupies is that of a zemindar, or a tenure-holder, or an occupancy-ryot. And if the law makes occupancy-rights saleable in the market, and confers upon the owners of those rights larger powers over their sub-tenants, than it gives to zemindars and tenure-holders, the occupancy-right is the position which it will best answer the planter's purpose to secure. And secure it he will; and who can blame him?

Sooner or later occupancy-ryots will want money. Their families will increase in number; discord and partition will sever the ancestral holdings; marriages and *shrads* become more and more expensive; Brahmins will have to be fed; and good seasons and prosperity will not last for ever. If the occupancy-right *can be* sold and mortgaged, most assuredly it *will be* sold and mortgaged; and that in a very few years. The man of money will buy up all the occupancy-rights, which are to be made the most valuable in the soil, and the occupancy-ryots of the present day will become in a few short years either non-occupancy ryots or coolies.

Only see what has happened within the last 150 years in our own country. How many of the old yeoman families, who were the copy-holders and customary tenants of former days (answering as nearly as may be to the Khudkhast ryots here), are in existence now? How many of the old country gentleman's families retain their ancestral property? The few of each class who are now to be found owe the slender remnant which still belongs to them to the law of entail. The rest has gone, and to whom? To those, for the most part, who answer to the land-jobbers, the mahajans, and the trades-people of India, that is to say, land agents, bankers, merchants, trades-people, and the other money-making classes. The land finds its way sooner or later into the hands of the man who makes money; and it is so, and will be so, in British India.

Amongst other interesting papers, which I have read upon the subject of the Rent Bill, I have been especially struck by a paper written by Mr. Herbert Reily, the Manager of the Chanchal Estates. He has had a long experience of these estates, and has studied and watched attentively the condition of the tenantry. I would especially call attention to the remarks made by this gentleman upon the mischief of allowing occupancy-ryots to sublet or to transfer their occupancy jotes. (See especially paragraphs 6 and 10 of his Minute.) He describes the state of indebtedness to the mahajans in which these poor people live, and what he says of Chanchal is true, I believe, in all parts of Bengal. A very large proportion of the ryots, even the better classes, are in this unhappy condition; and there can be no reasonable doubt, that a little adversity or extra pressure would compel them to sell their little properties. I say therefore again—and I say it far more in the interest of the ryots, than in that of the zemindars—"If you want to ruin occupancy-ryots, give them the power of transferring their interests." If you want, on the other hand, to do them a real benefit, prevent those interests from being transferred, even on estates where they are transferable now.

There never was, as it seems to me, a more fallacious argument, than that the ryot must needs be benefitted, by making his interest transferable, and consequently, *more valuable*.

No doubt you may thus make the estate itself *more valuable in the market;* but that is only when the ryot *parts with it.* To the ryot himself, its value is never so great, as when he retains it in his own hands, and gets a good crop out of it.

By making it *more valuable in the market* you tempt the man to turn it into money, and transfer its value to other people

By preventing its transfer, you oblige him to keep its value for himself and his family.

In my opinion, therefore, by making the occupancy-right transferable, you not only do the zemindar a wrong, but you do the occupancy-ryot a much greater wrong. You are taking away the best and indeed the only safeguard which is calculated to preserve him from ruin.

Chapter XIII.—Distraint and Ejectment.

It is needless to remind His Excellency that one of the principal objects of the new Rent Law was to provide more effectual means of enabling landlords to realize their rents.

That was the avowed purpose of the Bill which was introduced into the Bengal Council in 1877; and it has been admitted over and over again, that the landlords are fairly entitled to all the assistance in this respect which Government can reasonably afford them.

Now, what has this Bill done for the landlords? Absolutely nothing. On the contrary, it has taken away from them two of their most effectual remedies, namely, (*a*) the right of ejectment, given by the Act of 1859, if the rent is not paid within so many days from the date of the decree, and (*b*) the right of distraint.

Now, why should landlords be deprived of these remedies? The ryots themselves have never complained of one or the other. There is surely nothing unjust in ejecting a man from his holding, who, after subjecting his landlord unjustly to the expense and delay of a lawsuit, is unable or unwilling to pay the sum decreed; and as for distress, the complaints, such as they are, which have been made about it have been greatly exaggerated.

I believe that the most oppressive exercise of the right of distress, which we have ever heard of, occurred upon the estates of the Durbhunga Raj during the minority of the present Maharajah, when the estates were under Government management.

And there is special reason why a large portion of the rent of these estates can only be realized in that way. The Durbhunga property for a long distance lies on the boundary of Nepaul. The tenants cultivate one plot in one year, and another the next year; and unless the landlord watches his opportunity, and puts in a distraint upon the crops, the ryots carry them off across the Nepaulese boundary, and the rent is never realized at all. The only way of getting the rent from these people is to make a distress upon the crops; and if the landlord is to be put to the delay and expense of an application to the Court, before he can use his remedy, he may as well not apply at all.

The best proof that the remedy by distress is reasonable, and that it is not, generally speaking, exercised illegally, is shown by this incontestable and significant fact, that suits for illegal distresses are very rare. If the right were improperly exercised, the tenants would be only too ready to bring suits against the landlord; whereas the fact is, that of late years, there are hardly any such suits.

I find from the High Court Reports, that in 1881 the number of suits for arrears of rent was 144,127, whilst suits of all kinds relating to distraint were only 330; and in 1882 suits for arrears of rent numbered 155,668, whilst suits for distraint were only 282 ! ! !

This really seems a complete answer to the charge that the right of distress has been improperly exercised; and as for the right of ejectment, if it is considered that the time now given to the defendant to pay the rent is too short, make it longer; but do not take away one of the few remedies, which have proved effectual to the landlord.

Rent-suits.

As the High Court has already addressed the Government upon the subject of Rent-suits, I will say nothing more about it here. I only trust that what the Court has recommended with regard to additional Moonsiffs, and relieving landlords from the payment of stamp fees, may be favorably considered by the Government.

Khamar and Nij-jote Lands.

I have now only a few words to say with reference to Khamar and Nij-jote lands. I agree in the main with what is said in the protest of the late Rai Kristo Das Pal upon that subject. I cannot see why any attempt should be made to contract the right of landlords to lands of that description, or to leave the determination of those rights to the executive authorities, instead of to the Courts of law. Here again is an instance, as it seems to me, in which an attempt is made to strain the law unduly to the prejudice of the landlord, and in favor of the tenants.

Proposed Registration Law.

Having thus considered it my duty to criticise unfavourably some of the most important points connected with this Bill, I am glad to be able to express my sincere satisfaction at the prospect which is held out by His Honour the Lieutenant-Governor of a registration law being passed in aid of or in connection with this measure.

I have already, over and over again, expressed a strong opinion in favour of the extension of the registration law. I have called the attention of the Government to it on several occasions; and notably, in my Minutes on the Transfer of Property Act, and in my former Minute upon the Rent Law.

I believe that a good Registration Act would be the means of preventing in great measure the attempts at fraud and forgery which disgrace our Civil Courts; and that if the advice which I ventured to give the Government in my former Minute were carried out, it would be the means of checking, if not entirely preventing, the objectionable practices to which I referred in pages 11 and 12, and which operate as a sad injustice upon tenants generally, and especially upon the poorer class of ryots.

Let the proprietors and tenure-holders of every estate be duly registered, either in the zemindar's sherishta or in any Government office; let no one but the registered landlords be entitled to recover rent from the tenants or ryots; let the tenants or ryots, on the other hand, be bound to pay their rents to the registered landlords, and to no one else; and let the receipt of those landlords be a good discharge for the rent.

A law of this kind, well devised and enforced, would, I am satisfied, be the greatest possible blessing to the agricultural community; it would relieve landlords from most of the difficulties under which they now labour in collecting their rents; and it would relieve tenants, and especially ryots, from the hardship which they continually undergo of having to pay their rents twice over.

A registration law such as this would, of course, for the first three or four years, be productive of some litigation, because it would compel claimants to enforce their claims at once in an honest way, instead of waiting for years, in the hope of some fortunate chance turning up in their favour.

The Registration Act of 1876 has been productive of litigation for this very reason; but claims under that Act are now becoming settled; and titles, as time runs on, will be more and more secured.

I would invite the attention of the Governor-General in Council to what I said upon this subject in page 12 of my former Minute.

Conclusion.

In dealing with the Bill in its present shape, I have confined myself, as I proposed to do, to the discussion of some of its leading features. I have done so, partly from lack of time, and partly, because I cannot help hoping, that both the Government of India and the Secretary of State, after giving due weight to the numerous and very important memorials which have been presented against the Bill from all parts of the Province, and to the opinions of the large body of Government officers, who, like myself, are opposed to the measure, may think fit, either to withdraw, or very materially to modify, the present Bill.

Whatever may be the form which it may assume at a later stage, if the Secretary of State should approve of the Bill, I shall consider it my duty to address the Government again on such of the details as I consider objectionable.

I thought it right in the year 1882, and I think it right now, to warn the Government as earnestly as I can against a policy which, in my opinion, will ruin, or seriously injure, the large majority of the zemindars, and will be scarcely less injurious to the cultivating ryots.

It seems to me inconsistent with the good faith of the British nation, which the native community have hitherto had reason to respect, to deprive the zemindars of the rights and position which they have acquired under the Permanent Settlement.

I believe it to be not only unjust but impolitic to sacrifice the fortunes of the zemindars in order to enrich a large body of mahajuns and middlemen, who will neither be responsible to the Government for the revenue, nor be likely to prove as good landlords to the ryots, or as faithful servants to the Crown, as the ancient landed aristocracy of the Province.

CALCUTTA, RICHARD GARTH.

The 13th September 1884.

No. 2612, dated Calcutta, the 15th September 1884.

From—C. S. BAYLEY, Esq., Offg. Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of Bengal, Revenue Department.

IN continuation of my letter No. 2062, dated the 11th ultimo, I am directed to forward, for the information of His Honor the Lieutenant-Governor, a copy of a minute by the Hon'ble Mr. Justice Field on the Bengal Tenancy Bill.

MINUTE BY THE HON'BLE MR. JUSTICE FIELD ON THE BENGAL TENANCY BILL, 1884.

(As amended by the Select Committee.)

§ 1. *Section* 3.—In order to understand the definition of "estate" we must refer to sections 10, 11, and 12 of Act VII (B.C.) of 1876. From these sections, and the proviso to the definition of "estate"

Definition of "estate."

in the Bill, it will be manifest that *khas mehals* or other lands in the possession and under direct management of Government are not included in the term "estate," unless they happen to be revenue-paying lands, entered in the general register of revenue-paying lands mentioned in sections 6 and 7 of Act VII (B.C.) of 1876. From this and the definition of "proprietor" given in sub-section 2, section 3 of the Bill, it follows that in respect of such *khas mehals* Government is not a proprietor, nor is Government a tenure-holder; and, therefore, tenants on such Government lands are not raiyats (see sub-sections 2 and 3 of section 5), and therefore not entitled to the benefits proposed to be conferred by the Bill upon raiyats. The result of this will be that raiyats upon Government estates will be in a less favourable position than raiyats on the estates of private individuals; and thus Government apparently does not accept as fair and equitable for its own tenants the law proposed to be enacted as fair and equitable for the tenants of zemindars.

Raiyats in Government estates not entitled to the benefits of the Bill.

§ 2. The definition of "proprietor" is defective as it stands. The omission of the words "of a share of or interest in," which are to be found in the definition in the Bill which I had the honour to draft for the Commission, will lead to the most inconvenient results. These words were intentionally inserted in order to include *Mutwalis* of Muhammadan endowments, *Shebaits* of Hindu endowments, and other persons, of whom it is impossible to predicate that they own the land or an estate. I do not see the force of the word "under" in the definition of "tenant." The definition of "landlord" would appear to have been framed without reference to the provisions of the General Clauses Act as to the singular including the plural. The definition of "rent" does not appear to accord with the other provisions of the Bill. I take it that a tenure-holder will be admitted to pay rent. But according to the definition in sub-section 1 of section 5, he does not get the use or occupation of the land, but merely the right to collect the rents. The words "use or occupation," which imply the landlord's ownership, show how extremely difficult it is to formulate the idea of a landlord who is not a proprietor or owner.

Definition of "proprietor" defective.

Definition of "rent."

§ 3. The definition of "holding" is, to my mind, defective, and not in accordance with popular ideas. On referring to section 176 we find that there may be an *under-tenure* subordinate to a *holding*. A "holding" has hitherto been always understood to mean the land held by a raiyat, or the raiyat's interest in such land; and though there may be a holding in, and subordinate to, an under-tenure, the idea of an under-tenure within and subordinate to a holding is altogether foreign from the ideas of the people. It appears to me that a well-known and received phraseology ought not to be altered without the very strongest reasons. The words "under one set of conditions" in the definition of "holding" will be sure to lead to doubt and consequent litigation. It is very usual for a holding to consist of different kinds of land, *bastu*, *udhbastu*, *dihi*, paddy land, lands that grow two crops—paddy and the cold weather crop. The rates of rent of these different kinds of land are different. Small additions of plots of different kinds are made to the holding from time to time, and portions are occasionally given up. Nevertheless, all the land that the raiyat at any time holds, of different descriptions and at different rates, is understood to constitute his "holding." It can scarcely be said that all these parcels are held under one lease—commonly there is no lease—or under one set of conditions, for they vary as regards different portions of the holding.

Definition of "holding."

§ 4. The definition of "patni tenure," read with schedule II of the Bill, does not convey the idea that such a tenure is divisible. This incident was expressly inserted in section 14 of the Bill drafted for the Commission, and is a necessary consequence of the progress of the law since the Patni Regulation was passed 65 years ago. I note that the definitions of "tenure," "land," "lease," and "pottah" have been omitted. The necessity for these definitions was allowed by a Commission whose members were practically acquainted with the law of these provinces, and I think that their omission is a mistake.

Patni tenure.

Definitions omitted.

§ 5. *Section* 5 (1).—I do not see the force of the word "primarily," as the Bill does not proceed to provide for the secondary meaning of the term "tenure-holder." The definition as it stands appears to be defective. It excludes *jangalburi talukdars*, who have always been understood to be tenure-holders. These talukdars did not acquire merely the right to collect rents. They acquired an interest in the land itself, which they agreed to take with full power to reclaim and cultivate—part of it themselves and part by letting it to tenants after reclamation, or before reclamation to persons who would reclaim and cultivate, or sublet for reclamation and cultivation. Then the "tenure-holder" of the definition in the Bill is not a tenant, for he does not hold land, and he does not pay rent, for he pays and delivers nothing for the *use* and *occupation* of land. Again, the definition would include a mere agent or a mortgagee in possession, who are not generally understood to be tenure-holders. The definition appears to have been framed with a view to avoid the admission that a tenure-holder obtains an interest in the soil itself. When land is acquired under the Land Acquisition Act, the tenure-holder is allowed compensation for his interest in the soil, and there are numerous other facts well known to persons acquainted with the common law of these provinces, which leave no doubt that the tenure-holder acquires not merely the right to collect rents, but a substantial interest in the land itself. If a tenure-holder acquires no interest in the land, how can he

Definition of "tenure-holders."

give the use or occupation thereof to a tenant under him? Then regard being had to sub-section 3 of section 5, the definition of "raiyat" must fail. With reference to this sub-section it has already been pointed out that persons holding land in certain Government estates will not be raiyats, and will not, therefore, be entitled to the benefits of raiyats under the Bill, and it may further be pointed out that the same disability will attach to raiyats under lakhirajdars not registered under Act VII (B.C.) of 1876, *Shebaits*, *Mutwalis*, and other classes of landlords. What also becomes of persons holding under the mukarraridars and the istemrardars of the Regulations of 1793, persons of whom it is impossible to predicate that they acquired the right to collect rents? As to the definition of "raiyat" in sub-section 2, the observations already made apply to the use of the word "primarily." Then what is the exact force of the term "acquired"? No doubt it was intended to mean that the raiyat gets something more than the use and occupation mentioned in the definition of rent in sub-section 3 of section 5. But what this additional something is, and in what respect it differs from proprietorship or ownership, the Bill does not explain, and I find it impossible to conceive. As to sub-section 4, I have little hesitation in saying that there is no local custom in any part of the Lower Provinces of Bengal which will assist any Court in determining whether a tenant is a tenure-holder or a raiyat. If there is any such local custom which I have not met with in my experience, it would appear necessary to say which of the three principles of decision stated in the sub-section shall prevail when their results conflict.

Danger of the proposed presumption.

§ 6. *Section* 5 (5).—Is the tenant to be presumed to be a tenure-holder as against his landlord, or against or in favour of his sub-tenants, or both; or further as regards strangers? According to the provisions here made, if a man has a thousand bighas, and he sublets one cottah, he is to be presumed to be a tenure-holder. I entertain little doubt that these provisions, if ever attempted to be worked, will lead to enormous litigation.

Error on the subject of diluvion of tenures.

§ 7. *Section* 6.—Does the term "tenure" include "under-tenure," or is it intended that under-tenures shall be excluded from the benefits of these provisions? The provision in sub-section 2 as to diluvion is opposed to the common law of the country. The fact that a tenure-holder has received abatement for diluvion has always in these provinces been held to entitle his landlord to an increase of rent for alluvion. I am aware that increased rent for increased area is not treated as a gound of enhancement in the present Bill, and this is in accordance with the recommendation of the Commission. But this express provision as to diluvion is calculated to alter the well-known and settled law on the subject; and I know of no reason for the change. I think that Explanation 1 to section 7 of the Bill of the Commission, which embodied a judicial decision, ought not to have been omitted. I think, further, that Explanation 2, section 7 of the Bill of the Commission, ought not to have been omitted from this context.

Risks of collection.

§ 8. *Section* 7 (3) (*c*).—"Risks of collection." This term is new and definite, and will form a fresh element of litigation and judicial uncertainty.

Why should a tenure-holder's rent be enhanced higher than he can enhance that of his raiyats?

§ 9. *Section* 8.—Under the provisions of this section the rent of a tenure-holder may be doubled. But the tenure-holder can enhance the rent of his raiyats to the extent merely of 50 per cent., and in some cases of 25 per cent. On what possible grounds ought a tenure-holder to pay an increase of 100 per cent, while he can himself obtain an increase of only 25, or at the most 50 per cent.?

Tenure-holders should be allowed to contract. Mistake of ten years' limit to enhancement.

§ 10. *Section* 10.—I think tenure-holders may safely be left to regulate their own affairs by their own contracts. If there can be no enhancement by the Court for ten years after one contract, the tenure-holder will certainly never agree to contract for any increase during these ten years. The words "or by contract" should be struck out. Then again, why should a tenure-holder's rent be enhanceable after ten years, while he cannot enhance the rent of the raiyats under him for fifteen years? Section 11 omits to make permanent tenures expressly heritable: this omission should be rectified.

Mistakes committed in modernizing the language of the Patni Regulation.

§ 11. *Section* 13.—The provisions of this section ought to apply to all tenure-holders, and not to patnidars merely. I may here observe upon the fact of the draft of the old Patni Regulation being modernized in the present Bill. Having regard to the large number of judicial decisions bywhich the most important provisions of that Regulation have been interpreted and have acquired a settled meaning, it will probably be admitted that the difficulty of changing the phraseology without altering the law, or leaving loopholes for consequent litigation, must *prima facie* be very great. So strongly was I impressed with the difficulty of successfully performing this task, that I left the language of the old Regulation unaltered in the draft Bill which I prepared for the Commission. It is scarcely too much to say that the work of successfully altering the language of this old law could be successfully performed only by a draftsman thoroughly familiar with the case-law and with the old Regulation itself. And I feel bound to say that, in my opinion, the alteration has not been successfully performed in the Bill. The result will be a serious amount of very extensive litigation in order to set at rest the doubts that will thus be created. I may point out that the old Regulation of 1819, though known as the *Patni Regulation*, really deals with a much wider class of tenures than mere *patnis*, namely, that large class

designated as *tenures upon which the right of selling or bringing to sale for arrears of rent has been especially reserved by stipulations in the engagements interchanged on the creation of the tenure.* I must on the present occasion content myself with this general observation. I have not leisure to examine and point out the whole of the errors and omissions which are to be found in this portion of the Bill.

Provisions as to written reasons for refusal to register transfer of tenure.

§ 12. *Section* 15 (1).—Add to the proviso the words "unless and until it is paid." The danger of this provision will be that whenever registration has been refused and steps are taken to enforce it, the defence (difficult to disprove) will be that some rent remained unpaid. As to sub-section (3), I doubt if these provisions as to delivering a statement in writing of the reasons for refusal and the penalty for failing to do so will ever have any effectual operation. The provisions of the present Rent Law, providing penalties for the non-delivery of receipts, have remained almost a dead-letter.

§ 13. *Section* 16.—I see no objection to these provisions; but what is to be the sanction, what will be the result, if the purchaser refuse or omit to pay the registration fee and the fee for service of notice?

§ 14. *Section* 18.—No provision has apparently been made for the case mentioned in the *parenthesis, i.e.*, the case of the transfer by sale in execution of a decree for arrears of rent or by summary sale [*see* clause (*b*) of section 48 of the Commission Bill]. In the case provided for by the section of the Bill, I do not see why the landlord should be allowed to make the transferree liable without accepting the transfer. The provisions of sub-section 2 are, I think, a useful addition to the existing law.

Provision of the Bill as to registration of tenures.

§ 15. *Section* 19 (3).—I think the provision as to damages for neglect or refusal to register, contained in section 52 of the Commission Bill, ought to have been retained. I doubt the wisdom of the words "such order as in its opinion will meet the circumstances of the case" in sub-section (4). I apprehend rather curious instances of the exercise of the wide discretion conferred by these words. I do not see the expediency of the provision of section 20. In the case of a transfer, so long as there is no registration, the transferrer remains liable for the rent, but the landlord is in no worse position than he was before. In the case of a succession, I do not see how the person entitled to succeed can be made liable until he takes possession [*see* clause (*d*) of section 48 of the Commission Bill]. The person entitled to succeed may renounce. It will be remembered that a tenure cannot be relinquished by a person who has been let into or has taken possession. There are tenures in the country which have become so unprofitable that the tenure-holders would gladly relinquish them if they could. The effect of the section as it stands will be that an heir, who may now renounce, will be compelled to take over an unprofitable tenure. Section 20 does not provide for the case of a disputed succession, the litigation concerning which may extend over several years.

Landlord not bound to register transfer of share of tenure, or division of rent.

§ 16. *Section* 21.—The words "any share thereof" are dangerous. According to the existing law, no landlord is bound to recognize the transfer of a share. The transferree may indeed be registered jointly with other persons interested, but there can be no registration of a transfer of a specific share. The provisions of section 46 of the Commission Bill, that a landlord shall not be bound to give effect to a division of the rent, ought not to have been omitted from the Bill. There is no provision expressly declaring the effect of a transfer upon the liability for rent, and the exact point of time from which the change of liability is to take effect. Section 48 of the Commission Bill contains specific provisions on these points. The want of them in the Bill will assuredly cause litigation

Anomalous position of a raiyat holding at fixed rates.

§ 17. *Section* 23.—I doubt if the provisions of this section will work successfully. The raiyat holding at fixed rates will be partly a tenure-holder and partly an occupancy raiyat. He will have the rights of a tenure-holder with respect to the transfer of, and succession to, his holding; and as the result, the landlord will have no right of pre-emption. Then as *transfer* includes *gift* [section 3 (10)], he will not be fettered by the provisions of section 35. His rent may, however, be realized by distraint. Presumably it is intended that he shall be an occupancy raiyat as regards all other incidents; and, therefore, his sub-tenants will not be raiyats, but under-raiyats. I am afraid that from this admixture of relations there will arise much uncertainty and consequent litigation.

No settled raiyats in Government estates.

§ 18. *Section* 25.—The term "village" is defined in section 27, and may include lands held by Government. The term "estate" is defined in section 3, and, as already pointed out, will not include certain lands held by Government; but with reference to the words "held as a raiyat," it follows from sub-section 3 of section 5 that in certain Government estates there can be no settled raiyats. This provision in sub-section 2 is no doubt necessary to cover the time between the introduction of the Bill and the passing of the Act; but nevertheless I am afraid that when its object and meaning are understood, it will induce a large amount of perjury.

Injustice of the presumption that every raiyat has held his land for twelve years.

§ 19. *Section* 26 (2).—I cannot conceive anything more dangerous than the presumption here proposed to be created—namely, that when it is proved or admitted that a person holds land as a raiyat, it shall, as between him and his landlord, be presumed that he has held such land or part of it for twelve years. It proceeds upon the assumption that the zemindar

is in a better position to prove that a raiyat has *not* held land than the raiyat himself to prove that he has held it. I doubt the truth of the facts upon which this assumption proceeds in the case of any land, and in the case of an auction-purchaser the assumption is without foundation. In view of its effect upon this latter class, this presumption must depreciate the value of property brought to sale under the Revenue Law, or in the execution of decrees of the Civil Courts. Then, again, take the case of co-sharers, who are on unfriendly terms. A batwara or partition takes place, let us say, between *A* and *B*. A raiyat who holds land in *A's* portion of the original estate for twelve years becomes a settled raiyat and entitled to a right of occupancy in any land which he may acquire in *B's* portion and hold for any time, however short. How is it more easy for *B* to disprove the fact of the raiyat's holding lands for twelve years in *A's* share, of whose accounts and whose affairs *B* has no knowledge, than for the raiyat to prove the fact of his having held such land for the full period of twelve years? The use to which in a case like this the provisions of the proposed law will be put is very obvious to persons who have practical experience of the country. The effects of the proposed provisions as to the settled raiyat in some of the large zemindaris will be astounding. Take the case of a zemindari partitioned thiry years ago, the shares of which have since passed into the hands of purchasers for valuable consideration. A raiyat holds two cottahs of land in one of these shares. It is not the interest of his landlord to contest the question whether he has or has not held for twelve years. He therefore becomes a settled raiyat. He now takes fifty bighas within the share of a wholly different landlord, who has no connection with, and no knowledge of, the share in which the raiyat has held the two cottahs, the fact of holding which is concealed by him until he gets into possession of the larger area. He may be let into possession of this larger area by an agreement under the provisions of section 56; but the moment he is in, he discloses the fact of his previous possession of a couple of cottahs of land in a place perhaps 20 miles distant; and under the proposed Bill he at once acquires a right of occupancy in the larger area, together with all the advantages of this possession: nay, further, the law will not permit him to contract so as to escape perpetrating this injustice upon the landlord. Even where there has been no possession of any other land, what a temptation is offered to prove by bazar witnesses or friendly neighbours the possession of a cottah or two, and how easy will be the proof when facilitated by the presumption of sub-section (2). Then consider those cases in which a zemindari, like the Burdwan zemindari, has been let out in *patni*. The zemindar has become a mere annuitant; the real beneficial interest is in the *patnidars*; but any raiyat by holding, or pretending to hold, a few cottahs of land under one *patnidar*, and concealing this fact, may acquire a right of occupancy in any quantity of land within another *patni*. I am afraid that the effect of section 26 (2) taken with section 25 (1) will be in a very short time to transfer the real ownership of the land from the zemindars to the raiyats.

Injustice of the proposed provisions as to the settled raiyat.

§ 20. Then the effect of sub-section 4 will be that a person who to-day takes fifty bighas of land as a non-occupancy raiyat[1] under the provisions of section 56, and to-morrow inherits under the Muhammadan Law a fractional share of a single cottah, will at once be converted into an occupancy-raiyat of the larger area, and the parties may not avoid this result by contract; and it will be remembered that this result will take place although the raiyat may be a collateral heir very distantly related to the late owner of the single cottah. Further, the effect of section 29 (1) will be that a man who holds a cottah of land, and has ten sons, is able to create ten settled raiyats, every one of whom will at once acquire a right of occupancy in any land of which he can obtain possession in any *patni taluk* or share of an estate which constitutes, or within the last thirty years has constituted, a portion of an estate as large as an English county. The inevitable result of these provisions will be to transfer the proprietorship of the land from the ancient zemindars, or those who have become *bona fide* purchasers of their rights for valuable consideration at revenue sales, to an ignorant peasantry, unskilled in agriculture, constitutionally indolent, and wanting in thrift, abstinence, and every quality which has made peasant proprietorship succeed in those countries in which it has succeeded. If it be the intention of the Government to carry out this policy, results and consequences being disregarded[1], it might be carried out by a much simpler and more direct method than that proposed by the Bill, which will, I am afraid, create a vast amount of chicanery, perjury, litigation, and exacerbation of feeling between classes, while bringing about a similar result in a more indirect manner, and by a more tedious process. With reference to sub-section (7) it should surely be made a condition precedent that all back rents be paid up.

The law of inheritance applied to the settled raiyat.

Fatal consequences likely to ensue.

§ 21. *Section* 29.—This is a change in the existing law as contained in clause (*a*), example 4, section 19 of the Commission Bill.

§ 22. *Section* 30.—Is it intended that a right of occupancy in *khamar* land may be acquired in those cases in which such land is not held under a lease for a term of years or under a lease from year to year? If this is intended, I think it desirable that it should be said so in so many words. There has been considerable doubt about the meaning of the law as at present worded.

Right of occupancy in khamar land.

---

1 The *Statement of Objects and Reasons* contains the following passage :—"That the power of transferring and subletting which the Bill recognizes may in time lead to a state of things in which the great bulk of the actual cultivators would be not occupancy raiyats, but under-raiyats, with but little protection from the law, is indeed within the range of possibility; but if such a state of things should ever arise, we may rest assured that the Government of the day will know how to deal with it." See the same observation repeated in Council—*Supplement to the Gazette of India* of 3rd March 1883, page 291. I deprecate legislation in this spirit of "*Après moi le déluge.*"

§ 23. *Section* 31, *clause* (*a*).—Evidence of local custom is, as a general rule, not forthcoming. I would leave this matter of cutting down trees to be settled by agreement between the parties, merely providing that trees not planted by the raiyat shall not be cut down by him without the consent of the landlord. Under the provisions of section 210 (*b*) the parties will be unable to make their own agreement about the matter. Under the provisions of the Irish Land Act a tenant can cut timber planted and registered by himself or his predecessor in title.

Cutting down trees.

Clause (*d*).—It would appear that an occupancy raiyat cannot be ejected for non-payment of rent. This is not enacted in so many words in the present Bill, but it follows by necessary implication from its provisions (see section 58, which allows a non-occupancy raiyat to be ejected for non-payment of arrears of rent, and section 178, which provides for the sale in execution of a transferable holding). I think the landlord should have the option of ejecting an occupancy raiyat or bringing his holding to sale in execution. There are parts of the country where an occupancy holding, if offered for sale, will fetch little or nothing; and arrears will be irrecoverable unless ejectment is allowed, the apprehension of which is cogent to compel payment.

Ejectment for non-payment of rent taken away in the case of occupancy raiyats.

Clause (*f*).—I think the occupancy holding ought to be made transferable. In so saying I merely repeat the views expressed by me many years ago. I consider, however, that one limit ought to be put upon the right of transfer, viz. that the right of occupancy shall continue to exist only when the transferree is a *bonâ fide* cultivator. I entertain a very strong idea that the benefits included in a right of occupancy should be limited to the actual cultivators of the soil. In so far as they are so limited, anything that is taken from the proprietary right of the zemindar is given as the reward of honest labour. Having considered the whole subject for many years, I cannot see the expediency or policy of taking away any portion of the zemindars' proprietary right in order to confer it upon another class, which consists of mere receivers of rent, and does not create capital by the application of labour to the soil. There is no evidence to show, and no reason to accept, that any class other than the class of actual cultivators will make a more beneficial use of the proprietary interest than these zemindars have hitherto done. It is supposed that the class of actual cultivators will be sufficiently protected from rack-renting by land-jobbers if limits are placed upon enhancement. But a little reflection will show that rent may be raised in two ways-either by increasing the annual amount payable, or by taking a fine or *salami* upon the creation of a tenancy. Such fine or *salami* is merely a payment of rent in advance. When restrictions are put upon increasing the amount annually payable, if the amount so limited is less than a competition rent, it follows that the tenant has a beneficial interest equivalent to the difference between the rent actually paid by him and the competition rent. This beneficial interest will find a ready market. There can be no doubt that since Act X of 1859 was passed, this interest has become a saleable commodity, and I have known it to sell from seven to twenty times the annual rent paid. In Ireland it is well known that tenant-right in the north has been sold for as much as thirty times the annual rent (see *Landholding*, p. 287). Now, if the occupancy right is transferable to the members of every class of the community, the competition of capital is at once introduced. The improvidence and thriftlessness of the *raiyat* class are undoubted. Secured in their position, they will indulge their national indolence, and nothing will be laid up for the future. In years of drought and scarcity they will borrow. Their holdings will be mortgaged, and high interest will swell the incumbrances until a sale becomes inevitable. A large number of holdings will thus come into the market. The *mahajan* and the prosperous pleader will successfully compete with the landlord, and, having purchased the occupancy right, they will virtually secure a competition rent by exacting a fine or *salami* from every tenant whom they will admit to possession. In the face of this custom of *salami*, which is a custom of the country and in accord with the ideas of the people, a provision like that contained in section 42 of the present Bill will be absolutely nugatory, and the speculative purchaser will find a hundred ways of evading the restrictive provisions of the law, while the raiyat whom the legislature desires to protect will aid and abet him in avoiding these provisions. If the purchasing class be limited to actual cultivators, we shall at once get rid of the risk of a competition rent being indirectly introduced amongst a mere agricultural community, the pernicious effects of which have been remarkably illustrated in other countries; and by encouraging the actual cultivator to buy, we shall give some stimulus to that thrift, the absence of which is at present such a remarkable feature in his character.

Effect of occupancy holdings being made transferable without restriction.

§ 24. *Section* 31, *clause* (*g*).—I am strongly opposed to any direct legislative recognition of subletting. Sub-letting creates middlemen, and middlemen are the curse of a purely agricultural community. The Bill, we are told, aims at the creation of peasant proprietors; but in those countries in which peasant proprietorship has failed, there has been no greater cause of failure than subletting.

Danger of legislative recognition of subletting.

Clause (*h*).—I think it deserves serious consideration whether a right of occupancy should be heritable by collaterals or by heirs other than those in the direct line of descent. Those arguments which have been advanced with remarkable ability against wealth passing to distant relations may be justly considered in connection with the subject now in hand. Then again, there should be a distinct provision that a holding shall descend entire, and that the only mode of partition between heirs shall be by selling the holding and dividing the sale

Danger of subdivision by inheritance.

proceeds. It is idle to attempt by legislation to create anything in the nature of peasant proprietorship and so secure the well-being of the agricultural class, if continued subdivision of land is allowed, the inevitable result of which must be to create a pauper population, each family being in possession of a plot of land barely sufficient for its maintenance during the best years, while in years of deficient crops and famine, starvation or Government relief are the only alternatives.

Zemindar's right of pre-emption incomplete.

§ 25. *Section* 32.—I think the zemindar ought to have a right of pre-emption in the following two cases also—*first*, in the case of a bequest to a person other than an heir, or, according to my view, other than an heir in the direct descending line; *secondly*, in the case of a gift to a person other than such heir. Having regard to the ways and devices of the people of this country, it is futile to give the zemindar a right of pre-emption in the case of transfer for a consideration, while the same right is denied in the case of a gift. The only result that will ensue will be that the transaction will be embodied in the form of a gift, while the money will be paid in secret, and each of the parties to the transaction will be afforded a facility of cheating the other.

Sub-section 5.—If the raiyat, having sold his occupancy right, goes away and quits the village, there will then be an abandonment case; and if the transferree fails to maintain his ground against the landlord, the transferrer will return and make his possession good.

Sub-section 6.—How are the assessors to be remunerated? It is scarcely to be expected that they will give their services for nothing. If they ostensibly do so, it requires but little experience of the country to understand how their remuneration will be secured at the expense of their impartiality.

§ 26. *Section* 34.—I see no objection to the provisions to this section, which substitute the landlord for the mortgagee upon foreclosure.

Section 35.—I do not see the use of serving notice of the registration upon the landlord unless his right of pre-emption is extended to the case of gift. The meaning of the provision in sub-section 4, which is not very clear, appears to be that a Muhammadan may make a gift, according to the Muhammadan law, without a registered instrument. If this is what is really intended, I think the exception is an unfortunate one.

§ 27. *Section* 36, *clause* (*c*).—"authorized in writing"—Presumably the authority must be given before the transaction. The result will be that for a sufficient consideration a written authority will be ante-dated. If this provision be retained, the writing should be registered.

Inexpediency of the provisions as to converting into tenure-holders occupancy raiyats who sublet half their holdings.

§ 28. *Section* 37.—I feel bound to say that I consider the provisions of this section to be wholly inexpedient. They will assuredly give rise to an immense amount of litigation. At whose instance is the registration to be effected? Within what time after the sub-letting of more than half must the application for registration be made? Suppose that half is sublet in 1884, that the application for registration is made in 1885, and the occupancy raiyat proves that in 1885 less than half is sublet, what will be the result? The probable effect of the provisions of this section is well discussed in a paper which has been sent to me, called "Notes on the revised Tenancy Bill, 1884, by the East Bengal Landholders' Association." *First*, the converted occupancy raiyat will not be liable to distraint. *Secondly*, he can be ejected only upon the ground that he has broken a condition consistent with the provisions of the Act, and on breach of which he is by contract liable to be ejected. In ninety-nine cases out of a hundred there will be no contract, and therefore no liability to ejectment. *Thirdly*, he can transfer his interest without the restrictions as to pre-emption, &c., proposed by section 32. Against these advantages may be set the disadvantage of being liable to enhancement to the extent of double his previous rent, while he can enhance his own tenants merely to the extent of Rs. 25, or in some cases 50 per cent. In all probability this latter advantage, if the tenant fairly considers his position, will go to balance the three advantages just mentioned. The tenant himself will thus scarcely move in the matter of registration. Then, can the landlord compel him to register as a tenure-holder? If not, will it be for the interests of the sub-tenants to do so? No doubt they will occupy a better position when converted into occupancy-raiyats than they have as non-occupancy raiyats, even under the provisions of Chapter VI of the Bill. But without the pressure of circumstances they will not move for the mere purpose of gaining a prospective advantage.

The actual cultivator should be protected whether he holds under a zemindar or a middleman.

§ 29. It appears to me that if we are to legislate in the true interests of the agricultural population, the best mode of dealing with this question is to determine the size of a holding, the actual cultivation of which is sufficient to maintain an average family in comfort, to maintain the right of the original tenant in a holding of this size, and to give a similar right to the sub-tenants of the remaining portions of the original holding. By this course the position of the actual cultivator of the soil will be uniformly secured. I can see no reason why the proprietary interest of a zemindar should be injuriously affected by legislation for the benefit of a middleman, while the corresponding interest of the same middleman is protected to the detriment of the actual cultivator of the soil under him. On what principle can it be contended that the position of a Rungpore jotedar who holds one thousand bigahs of land, fifty or a hundred of which he cultivates himself, while he sublets the remaining nine hundred, should be protected as against the zemindar; whilst the tenants of the nine hundred bigahs, who are the actual cultivators of the soil, and who

are as much deserving of legislative care and protection as the jotedar himself, are placed more at his mercy than he is left as regards the zemindar? If in the interests of the cultivator of the soil it is desirable that the ancient landmarks of property should be altered in these provinces, let the actual cultivator be equally protected in whatever position he may be found, whether as the tenant of a zemindar or of a middleman. Under the latter, indeed, he stands in greater need of protection, for the middleman is a smaller, and therefore a more grasping and tyrannical landlord. I am further of opinion that no raiyat ought to be allowed to acquire a right of occupancy in more land than is sufficient for the maintenance in comfort of himself and his family. When he obtains more than this, he sublets the surplus and becomes a middleman in respect of this surplus. It is impossible to argue that he is a better landlord than the zemindar, or that the community at large are benefitted by the transfer to him of a portion of the zemindar's proprietary right. When I speak of the actual cultivator of the soil, I take it for granted that proper provisions will be made for *purda nashins* and persons disabled by old age or other accidental cause from conducting the work of cultivation with their own hands—provisions in fact similar to those contained in the proviso to section 38. As to clause (*a*) of this proviso, what is temporary absence? Does it include the case of a Cuttack raiyat who serves as a chaprasi in Calcutta long enough to earn a Government pension?

Inexpediency of the enhancement provisions of the Bill.

§ 30. *Section* 41.—The provisions of this section do not recommend themselves to me. According to the proposed provisions of the Bill, rent can be enhanced in one of two ways only—either by a registered contract under section 41, or by a suit under section 43 and the following sections. Any enhancement by a registered contract can in no case exceed 25 per cent., and unless the term of the contract be for at least fifteen years, the enhancement cannot be for more than 12½ per cent. An enhancement by suit may in certain cases be to the extent of 50 per cent. The necessary result of these provisions will be that the zemindar will have a direct interest in litigating rather than in making an amicable settlement. The provisions of the Bill, therefore, encourage instead of discouraging litigation. This result has been seen and fairly commented upon by the East Bengal Landholders' Association in the paper to which I have already referred. Then, again, in the case of enhancement by registered contract, no distinction is made between the different grounds of enhancement. In the case of enhancement by suit, such a distinction is made. The extent of the enhancement on the ground of prevailing rates is fifty per cent., while in the case of enhancement on the ground of rise in price it is twenty-five per cent. I cannot understand any reason for making this distinction in the one case rather than in the other. I think enhancement by registered contract ought in all cases to be allowable to the same extent as enhancement by suit. Where the parties agree amicably, the expense of litigation and the exasperation of feeling created thereby are avoided.

Discretion entrusted to officer registering contracts of enhancement inexpedient and dangerous.

§ 31. *Section* 41 (2).—I think the remarks of the East Bengal Landholders' Association upon these provisions are deserving of consideration. It is, in my opinion, inexpedient and inadvisable that the power contemplated by this section should be entrusted to the registering officer. Is he to certify that the contract is according to the provisions of the Act? Will his certificate be conclusive, or may the whole question be re-opened as a basis of further future litigation? What guarantee is there that he will read or be able to understand the provisions of this complicated enactment? How is his decision, if patently wrong, to be reviewed or set right? The check and supervision contemplated by these provisions will be unsatisfactory and irregular in its action.

§ 32. *Section* 42.—The words "previously held at a money rent" are very indefinite Do they mean at any time previously, however remote? There ought to be some limit in point of time.

Restriction of staple crops to food-crops inexpedient.

§ 33. *Section* 43(*a*).—The substitution of "occupancy raiyats" for "raiyats of the same class" makes this ground of enhancement more definite, but at the same time it cuts down the general words of the previous law, and excludes considerations which the Courts were before bound to deal with. The substitution of "staple food-crops" for "staple crops" in clause (*b*) does not recommend itself to me. At page 11 of the paper of the East Bengal Landholders' Association, already referred to, there are objections stated to this change of phraseology, which are, I think, entitled to consideration. According to the common law of the country, the crops which land was capable of producing have always been an element in fixing the rent Lord Cornwallis expressly contemplated the raising of rents by inducing the raiyats to cultivate the *more valuable articles of produce* (see *Landholding*, p. 540). Some of the most valuable crops can be grown only in particular localities, or upon high ground not subject to inundation. The higher rents which the landlord received for these more valuable lands were a set-off against the lower rents paid for lands capable of producing one crop only during the year, or subject to inundation. No arguments have been advanced to explain the grounds upon which crops other than food-crops are in future to be excluded from consideration in calculating enhanced rent. I am therefore unable to form any opinion as to the value of the reasons which have led to the change. But the change itself appears to me unnecessary and unfair to landlords.

§ 34. The ground of enhancement on account of rise in prices, as stated in the Bill which I drafted for the Commission, contained the following words "from causes not merely temporary or casual," and I think they ought not to have been omitted.

Right to enhance on account of increase in the productive powers of the soil cut down in the Bill.

§ 35. The two cases provided for in clauses (*c*) and (*d*), namely, the case of an improvement effected by the landlord, and the case of fluvial action, are a substitution for the old ground of enhancement, that the productive powers of the land have increased otherwise than by the agency or at the expense of the raiyat. Now, it is manifest that the general language of the old ground of enhancement included cases other than the two cases which now find a place in the Bill; and this being so, the landlord's right to enhance has been seriously cut down. I cannot approve of the change; and I think here also the objections raised by the East Bengal Landholders' Association, at page 12 of their paper, are entitled to a hearing. I think the term "fluvial action" will be found in practice to be so vague as to create much litigation. If a river changes its course and flows 30 miles off, so as gradually to render lands, which were low and subject to inundation, high and capable of bearing the more valuable crops, is this the result of fluvial action? Here the lands may not produce a greater quantity of the former crops—indeed, they may no longer be fit to produce those particular crops at all; but they may have become fit to produce other and more remunerative crops.

Limit of enhancement to prevailing rate too low.

§ 36. *Section* 44 (*a*).—I think the limit of 50 per cent. put upon enhancement, on the ground that the rent previously paid was below the prevailing rent, is too low. It inflicts a direct punishment upon indulgent landlords, who have not raised their ryots' rents in past years. If the prevailing rate be Rs. 2 per bigha, the landlord who has been satisfied to receive Re. 1 per bigha from his tenants, will be precluded from obtaining more than one rupee eight annas in future, while the more exacting landlord, who has already raised his rents up to one rupee eight annas or more, will be able to exact the full prevailing rate. I may refer to what has occurred in Ireland to show what will be the probable consequence of this legislation (see *landholding*, pp. 313-314). At page 13 of the paper of the East Bengal Landholders' Association there will be found an illustration which fairly shows how these provisions will work. See also the remarks at page 12 of the same paper. One result will be that in those parts of the country in which during recent years the ryots have successfully combined to resist the payment of a reasonable increase, the Bill in its present form will reward instead of punishing this combined resistance. As to clause (*d*), what if the land, the rent of which is sought to be enhanced, be improved land, and the prevailing rate be the rate for improved lands? See the criticism at page 14 of the East Bengal Landholders' Association's paper.

§ 37. *Section* 45 (*a*).—The words "during such other quinquennial period as it may appear equitable and practicable to take for comparison" do not recommend themselves to me. Taken literally, they involve an examination of all antecedent quinquennial periods in order to discover which of them should be considered, and they in consequence open up rather a wide field of enquiry. I prefer the words of the original Bill—"at the time when the rent was fixed or at any subsequent time."

Enhancement of twenty-five per cent. on the ground of rise of prices too low.

Section 45(*b*).—The limit of four annas in the rupee, or 25 per cent. upon enhancement on the ground of rise of prices, is, I think, too low. A successful suit will scarcely repay the landlord the expenses incurred in litigation; and a landlord, who is met by determined resistance on the part of the whole body of his tenants, and has in consequence to take them all into Court, will, upon the chances of the entire litigation, be undoubtedly a loser. I know of a remarkable instance in which European capital was spent upon enhancement litigation, and although the enhancement obtained was much higher than 25 per cent. on the old rent, the general result was disastrous loss. Then, if we look at the enhancement in Government estates, a notable instance of which is pending before a Bench of the High Court as I write, we shall see that the limit which the legislature proposes to provide as fair and equitable for the zemindars has been exceeded by the Government in its capacity of landlord. The additional check of the proportion rule, proposed by clause (*g*), will be found wholly unnecessary in practice, if the 25 per cent. limit is retained.

Enhancement on account of landlords' improvements.

§ 38. *Section* 46.—The permanence of the increase of the productive powers of land is an element which ought not to be left out of consideration. The provision contained in clause (*c*), allowing the Court to reconsider its decision, will be a fruitful source of uncertainty and consequent litigation. Finality in the settlement of rent is beyond all things desirable and necessary, and under this provision there will be no finality.

§ 39. *Section* 47.—I think the restriction in clause (*b*) ought to be omitted, that contained in clause (*c*), namely, that the landlord shall not get more than half of the value of the net increase in the produce, being quite sufficient for all equitable purposes.

General provision as to enhancement being fair and equitable.

§ 40. *Section* 48.—Is another of those vague and indefinite provisions which abound in the Bill, and which are sure to lead to protracted discussion and litigation, where speedy finality is especially desirable. The imagination of a Bengali pleader will invent a thousand reasons why any enhancement is unfair or inequitable. As urged by the East Bengal Landholders' Association, the application of these general provisions to cases of enhancement up to the prevailing rate, and on the ground of the landlords' improvement, is *primâ facie* unfair.

§ 41. *Section* 49.—Cannot justly be applied to a case of enhancement on the ground of landlords' improvements. No limit of enhancement has been expressly provided for this ground of enhancement; but, none the less, I think it extremely unlikely that any landlord will invest capital in improvements upon the chance of the precarious return which is likely to be possible under the provisions of the Bill. In this, beyond all other cases, it might seem that the landlord and his tenant ought to be left free to contract—that it should be open to the landlord to say to his tenants—"Give me such an increase of rent, and I will construct such an embankment, or carry out such irrigation works, or other improvements." The provisions of section 41 are, however, a bar to any contract for the payment of more than 12½ or 25 per cent. increase on the previous rent, and in the majority of cases this return will be insufficient to induce the investment by landlords of capital in the improvement of the soil.

Tenants should be allowed to contract for payment of increased rent when landlord makes improvements.

§ 42. *Section* 50.—I would substitute *ten* for *fifteen* years. Moreover, a previous suit should not be a bar to a subsequent enhancement suit, unless there had been a final decision upon the question of enhancement. The dismissal of a suit on some technical ground is no reason for prohibiting a second suit within the time limited.

Successive enhancement suits.

§ 43. *Section* 51, *clause* (*a*).—I prefer the language of the old law, viz. that the productive powers of the land have decreased from some cause beyond the *ryot's* control. Here, as in other portions of the Bill, I think it is inadvisable without good reason to alter the old and accepted phraseology.

Abatement of rent.

Clause (*b*).—In accordance with what I have already said, I would not limit the crops to staple *food*-crops.

§ 44. *Section* 52.—I presume these lists are to be prepared annually, though the section does not say so in express terms. As to *sub-section* (2), I doubt the wisdom of any attempt to prepare price-lists for past times. It is said that materials for such price-lists exist in the statements of prices published regularly by the Bengal Government during the past twelve years. Those who know the manner in which, and the agency by which, this information has been collected, will scarcely suggest with seriousness that it should be accepted as the basis of price-lists, which are proposed to be made conclusive. As to *sub-section* (4), I think price-lists should not be made conclusive: they should be presumptive evidence only. With reference to *sub-section* (5), fifteen days is much too short a time. It should be a month at least.

Preparation of price lists.

§ 45. *Section* 53 (4).—If clauses (*a*) and (*b*) become repugnant *inter se*, which shall prevail? As to (*b*), why has the period of *ten* years been chosen? An enhancement once made is to hold good for fifteen years, and in calculating enhancement on the ground of rise of prices [section 45 (*a*)] a period of five years is taken. These various periods do not appear to consist with any settled principle.

§ 46. *Section* 57.—I am unable to see the justice of the restriction proposed to be placed upon the enhancement of the rent of a non-occupancy ryot. Since the time of the Permanent Settlement, the zemindars have enjoyed the unrestricted right of letting, in any manner they pleased, lands not in the possession of the protected classes of ryots. These protected classes now aggregate 90 per cent.; or, according to the lowest calculation, 70 per cent of the ryots. This section and section 42 which prohibits a zemindar from taking from a new tenant a higher rent than that paid by a previous holder, are serious encroachments upon the right which the zemindars have enjoyed for nearly a century—encroachments for making which I consider that no case has been established. I have shown elsewhere (see *Landholding*, pages 517 to 523) that the Legislature in 1793, while reserving to itself the right to protect the raiyats when necessary, deliberately left to the zemindars the power of letting the remaining lands of their estates, in whatever mannner they might think proper; and that this right has been enjoyed from 1793 down to the present day.[1] It was deliberately saved and left untouched by the Legislature in 1859 [see section 7 of Act X of 1859], and again in 1869 [see section 7 of Act VIII (B.C.) of 1859]. If further proof of the zemindar's right is wanting, it will be found in the cases given in the *appendix* to this minute, many of which show that the zemindar's exercised, and had the authority of the courts for exercising, the power of dealing as they pleased with lands relinquished or never occupied by ryots of the protected class. If it be true, then, that the right of letting the remaining lands in any manner they pleased was conferred upon the zemindars in 1793, and has been exercised and enjoyed ever since for a period of ninety years before that right can be taken away, a strong case for taking it away ought to be shown, and I am of opinion that no such case has been shown or established. If the real proprietary interest in 90 per cent., or even 70 per cent., of the land has been transferred to their tenants, there is very little left to give landholders an interest in the management of their property; and if this little that is left is also taken away, zemindars will be converted into mere annuitants, saddled

Unfairness of restricting enhancement of rent of non-occupancy ryot.

[1] In 1815 the Government of India wrote thus to the Court of Directors:—"In like manner the zemindar in this country, in holding his estate subject to certain restrictions with respect to the rights of the *resident ryots*, does not the less enjoy the power of managing those lands on which no resident ryots are established, in any mode he may judge proper ....a of providing for the cultivation of waste lands; of improving the general condition of the estate; and finally of enjoying the surplus revenue, whatever it may be, after paying the regulated assessment to Government." [Paragragh 11 of Revenue letter from Bengal dated 7th October 1815—I *Revenue Selections*, p. 295.]

with onerous duties connected with property, in the management of which it will be impossible for them to take any real interest; and the result must be injurious to the best interest of the country.

Under the provisions of the Bill all the land in the country will pass into the hands of occupancy raiyats and middlemen, and zemindars will have no interest in their property.

§ 47. *Section* 58.—Reading this section with section 98, there can be no ejectment except after suit and decree; and reading clause (*a*) with the other portions of the Bill, no raiyat other than a non-occupancy raiyat or an under-raiyat is subject to ejectment. It follows from clause (*c*) that a non-occupancy raiyat admitted to possession verbally or by a written unregistered lease can never be ejected as long as he pays a fair and equitable rent determined by the Court; and the consequence of this and other provisions of the Bill will be that all the land in the country will, in a very few years, pass into the possession of occupancy raiyats and middlemen; and the zemindars, having no remnant of property left, will have no interest in their estates

Ejectment will practically cease.

§ 48. *Section* 60 (1).—When the agreement is tendered to the raiyat out of Court, he will deny the tender, and when it is served through the Court, he will deny the service, and the experience of enhancement notices shows how extremely difficult it is for the landlord to prove tender or service. The result will be that ejectment suits will rarely, if ever, prove successful.

§ 49. *Section* 60 (9).—The enhancement of the rent of a non-occupancy *raiyat* being limited to eight annas in the rupee, or fifty per cent., he is at once placed in the position of an occupancy raiyat if he agrees to pay the enhancement so fixed.

Limit upon rent exigible from under-raiyats.

§ 50. *Section* 62.—It is impossible to think that the effect of this provision upon some of the *raiyats* in Bengal has been seriously considered, more especially as the Bill contains no saving of the existing contracts. Some of the Rungpore jotedars, who have been decided to be raiyats, now receive from their under-raiyats rent four-fold, or many more times greater than the rent which they pay to their landlords. It can scarcely be intended to destroy at once the relations between these parties, and to place the under-tenants of the jotedars, who are the actual cultivators of the soil, in the position of under-raiyats. No information has been given as to the *data* upon which 50 per cent. and 25 per cent. have been calculated. and, like many similar figures inserted in the Bill, they seem to have been assumed upon purely conjectural grounds. I think it is a very dangerous experiment to legislate in this way without some exact information as to what the effect will be upon the classes concerned.

§ 51. *Section* 63.—Three months notice is quite sufficient.

Twenty-years' presumption taken away in the case of registered tenancies.

§ 52. *Section* 64 (2).—I think the following words of the old law have been injudiciously omitted—"unless it be proved that such tenure or holding was created or such rent fixed at some later period." The expediency of the proviso will altogether depend upon the provisions made for registration and the nature of the enquiries required before registration. Unless and until these are known, it is premature to pronounce any opinion upon the proviso. As to *sub-section* 5, what is the meaning of the words "determinable at the will of the landlord," and what tenancy allowed by the Bill is contemplated by these words?

Presumption that tenant holds at rent previously paid.

§ 53. *Section* 65.—These provisions are not as clear as they might be. As to the rent, I take it that it is meant to reproduce the provisions of the latter portion of Art. 42 of the Digest, viz. that in case of dispute the rent previously paid by the raiyat shall be deemed to be fair and equitable. If no rent has been paid during the last preceding agricultural year, which is the case very often, how can the tenant, in the words of the section, be presumed to hold at that rent?

Alteration of rent upon alteration of area. Defects in the proposed provisions of the Bill.

§ 54. *Section* 66.—It is a well known custom of the country, especially in the case of tenures, for the title deeds to contain an express stipulation that there shall be no increase or decrease of rent for alluvion and diluvion. In the case of tenures section 217 will probably save the custom; and as section 210, clause (*f*), prohibits any contract for the non-reduction of rent on account of the diminution of the area of a holding only, it will probably follow that there may be such a contract in respect of a tenure. All this, however, has to be evolved from an examination of the details of the present Bill, and doubtless it will be finally settled by litigation only. I think that it would have been much better to state it in express language, as was done in the Commission Bill. Then in the case of holdings (as already pointed out, the definition of "holding" does not limit the term to raiyati holdings), section 210, clause (*f*), prohibits a contract, and the effect of this prohibition read with section 217 will probably be to destroy the custom also. I cannot see the benefit of this legislation in the case of large holdings like the *jotedari* holdings of Rungpore. Further, when there is a stipulation in a lease or vernacular pottah that there is to be no increase or decrease of rent for alluvion or diluvion, will the stipulation as to diluvion become null and void as against the landlord, whilst the stipulation as to increased rent not being demandable for alluvion is maintained to his prejudice? On this point also, I think the observations made by the East Bengal Landholders' Association at page 16 of their paper are enitled to consideration. In *sub-section* (2) there is one principle for assessing rent upon land gained by alluvion, while *sub-section* (3)

prescribes a different principle for abatement of rent in the case of diluvion In many parts of Bengal, tenures and holdings in the course of years are wholly diluviated and reformed again. Consider the effect of these provisions upon a holding or tenure which has undergone this process. The old rate of rent will entirely disappear, and the new rent will be a rent calculated under *sub-section* (2) upon a wholly different principle. Then there is another case which does not appear to have been contemplated, that is, the case of a tenure or holding which for a time wholly disappears. If neither custom nor contract is to prevent the raiyat from claiming abatement to the full extent of his rent, and if in consequence he pays no rent while the holding is submerged, can he have any claim to the possession of the same holding when it is reformed?

§ 55. *Section* 67 (3).—How is the Local Government to be compelled to take these matters into consideration, and what will be the consequence if they are not considered?

§ 56. *Section* 68 (2).—Is it intended that the Local Government is to have the power conferred by thy proviso, generally, or in particular local areas only? There may be parts of the country where payment of rent by postal order may be possible or successful, whilst in other parts it would be neither.

Receipts, &c., should be demandable for cess paid by tenants.

§ 57. *Section* 70.—The following very important words in section 57 of the Commission Bill have been omitted, viz. "or money recoverable as rent." Under section 47 of the Cess Act, IX (B.C.) of 1880, landlords are entitled to recover cesses as rent. It is intended that the tenants who pay these cesses are not to have the benefit of the provisions of the Bill as to receipts and accounts.

Bill increases and enforces zemindar's duties, while it impairs their privileges.

§ 58. *Section* 72.—The forms of receipt are very elaborate, and the cost of maintaining these receipts and accounts will be no unimportant item in collection charges. When to this is added the penalty provided by *sub-section* (3), the observation naturally occurs that a degree of care in the management of their concerns is exacted from landlords, and their affairs are subjected to a degree of scrutiny, which will make their position onerous as compared with the position of merchants or other members of the community. It is impossible to avoid reflecting that the imposition of the duties contemplated by the Bill can be justified only on the supposition of substantial benefits being granted or maintained; and if these benefits are wanting, the justification for the imposition of onerous duties fails. When we say that property has its duties as well as its rights, we imply that rights and duties are correlative; and that legislation which destroys or impairs the rights, while it increases or enforces the duties, must be obnoxious to unfavourable criticism.

Provisions as to deposit of rent are too wide.

§ 59. *Section* 73.—The provisions of this section have been so enlarged that on reading them the idea at once suggests itself that it would have been a much simpler method of effectuating the intention of the Legislature to declare that every tenant may, whenever he pleases, deposit any sum as rent instead of tendering it to his landlord. Clause *(a)* allows the tenant to deposit when he has tendered *money*, that is, any sum of money on account of rent. The Bill of the Commission provided, and I think very properly provided, that a deposit could be made only when the full amount of rent due to date, together with interest to date, had been tendered to the landlord. It is only on the supposition that the whole rent due to date has been deposited that the shorter period of six months' limitation can fairly be prescribed for a suit for further arrears claimed. If a tenant owes one hundred rupees as rent, and deposits ten rupees only, why should the landlord have only six months instead of three years to sue for the remaining ninety rupees? Then under the provisions of the new Bill, the tender may apparently be made *anywhere*, the old law being that the tender must have been made at the Mal Cutcherry or other place where the rent was payable. The importance of this provision is well understood by persons who have practical experience of the subject in hand. Clause *(b)* allows the tenant to deposit his rent when he has *reason to believe* that, owing to a dispute or ill-feeling, his landlord will be unwilling to receive it and grant a receipt for it. Then the officer who is vested with the power to receive these deposits has under section 74 (2) the power to examine the intending depositor in order to discover the ground or the reason of his belief. The application of these provisions to cases in which all the raiyats on an estate have combined against their landlord will necessitate the employment of a considerable agency or (what is more likely) these elaborate provisions will remain a dead-letter. Surely it would be much better, as I have already said, to allow the tenants to deposit their rent whenever they choose to do so. Then an application for permission to deposit may apparently be made at any time, even after a tender. The Bill of the Commission limited a certain time for each case, and I think the omission of this limit has been a mistake. The East Bengal Landholders' Association have pointed out that the limitation of six months for the recovery of arrears of rent from the *date of deposit* will involve hardship. The six months' time should run from the date of *service of notice* upon the landlord. I feel constrained to say that the provisions of the Commission Bill on the subject of deposit of rent were in every way preferable to those of the present Bill.

§ 60. *Section* 75 (1).—The notification should take the form of a list of the depositing tenants and the sums deposited by them. The section as it stands may seem to mean that there is to be a separate notification for each deposit, which will entail unnecessary labour and expense.

§ 61. *Section* 76 (1).—These provisions appear to me to be too wide, and I think that they have been unwisely substituted for the specified cases set out in section 61 of the Commission Bill. Here, as in other portions of the Bill, the details suggested by practical experience have been discarded for general language pregnant with litigation.

§ 62. *Section* 77 (2).—I do not understand the force of the words "this right shall be without prejudice to the landlord's charge under sub-section (1)."

Grant of extension of time to raiyat about to be ejected.

§ 63. *Section* 78 (3).—When may the Court exercise this power of extending the period of fifteen days—at the time of making the decree, or at any subsequent period? I should be prepared to substitute one month for fifteen days; but I am opposed to allowing the Courts a discretion to extend the time for an unlimited period.

Provisions as to interest unfavourable to zemindars.

§ 64. *Section* 79.—Why should interest be allowed only from the expiration of the agricultural year, and not from the dates on which the unpaid instalments of rent become payable? I think the last sentence of section 56 of the Commission Bill has been unwisely discarded. Interest ought to be made payable in every case in which the tenant was able to pay his rent and did not do so.

Appraisement or division of crops.

§ 65. *Section* 81.—The provisions here contained are no doubt much briefer than those of section 84 of the Commission Bill, but I think that, in the case of officers new to the subject who have to administer the law, this brevity will be found to have been purchased at the cost or risk of error. The provisions of the Commission Bill were designedly amplified that those who ran might read. What is the "proper time" referred to in clause (*a*), and who is to fix it?

Assessors to appraise or divide the crops.

§ 66. *Section* 82.—How are these assessors to be paid, and from what classes are they to be taken? I apprehend that this provision as to assessors will completely fail.

Sub-section 5—"enforceable as a decree." By what Court or authority?

Possession of the crop.

§ 67. *Section* 83.—I think the provisions of this section are fair and reasonable, and the same remark applies to section 84 (2), which is new.

Omission of declaration of zemindars' rights.

§ 68. *Section* 85.—Why have the other provisions of section 71 of the Commission Bill been omitted? Is it fair to retain those provisions only which impose penalties or disabilities upon the landlord class, while those provisions which declare their rights and privileges are omitted?

Provisions as to improvements not required in those provinces.

§ 69 *Section* 87.—The term "letting value" has been borrowed from the Irish Land Act of 1870, by which improvements are defined to be, amongst other things, any executed work which adds to the *letting-value* of the holding. But what will be the use of letting-value as a test in a country in which competition rent does not exist, or if it ever existed, will, as is proposed, be effectually done away with by this Bill? All these provisions as to improvements may no doubt look very well upon paper, but persons who have had practical experience of these Provinces know very well that there has yet arisen no effective demand for any such legislation.

Occupancy raiyat declared to have the larger share in the proprietary right.

§ 70. *Section* 89 (2).—Where the occupancy raiyat and the landlord wish to make the same improvement, it is here provided that the occupancy raiyat shall have the prior right to make it. The reason for this provision is given in paragraph 88 of the *Statement of Objects and Reasons* annexed to the original Bill in the following words:—

"The principle on which the sections of the Bill relating to this subject proceed is, that that party to a tenancy whose interest in the land preponderates should have the perferential right to improve and take the full benefits of his improvements.

The result is a legislative declaration that the occupancy raiyat has the preponderating interest in the land, or the larger share in what is really the proprietary right.

Improvements by non-occupancy raiyats. Result of the provisions of the bill as to the erection of dwelling-houses.

§ 71. *Section* 90.—Under these provisions a non-occupancy raiyat, a tenant, it may be, for a year only, is entitled to erect a suitable dwelling-house for himself and his family, and, under sub-section (2), he may call upon his landlord to make any other improvement that he considers desirable. The Bill in no way limits the size of the holdings to which these provisions are applicable, and it follows that an occupant of a single cottah may erect thereupon what he considers to be a suitable house. Then again as the singular includes the plural, the ten sons of an occupancy raiyat may erect ten suitable houses for their ten families; and if these familes multiply in the same proportion, the holding may be converted into a *basti* or village without the zemindar's permission, and even against his will. Surely if these provisions are at all to be adopted, the application of them ought to be limited to holdings of a sufficient size to support an ordinary family in average comfort.

Registration of landlord's improvements.

§ 72. *Section* 91.—The provision for the registration of landlords' improvements is also borrowed from the Irish Land Act, which provides for the registration, by landlords and tenants in the Landed Estates Court, of improvements made by them respectively. I am

afraid that this register, if it ever be established in these Provinces, will remain blank or nearly so. Zemindars are little likely to invest their capital in improvements upon the chance of obtaining the return afforded by the enhancement provisions of the Bill.

Compensation for raiyat's improvements.

§ 73. *Section* 93.—If I understand the provisions of the Bill rightly, it is only a non-occupancy raiyat who can be ejected, and therefore it is only a non-occupancy raiyat who can make a claim under this section to compensation for improvements. The only improvements which he can make in accordance with the Act are the erection of a suitable dwelling-house, or some other improvement, which under section 90 (2) he has undertaken because his landlord refused to carry it out. Who is the *predecessor in interest* of a non-occupancy raiyat? I am unable to discover from the provisions of the Bill. If these words be retained, it may be well to consider the difficulties that arose upon the construction of the term "predecessors in title" in the Irish Act of 1870 (see *landholding*, page 317).

Hardships of the provisions that a non-occupancy raiyat may not be evicted until compensation for improvements has been paid to him.

§ 74. *Section* 93 (2).—The effect of this restriction upon ejectment must be that landlords will, in very few instances, be able to evict non-occupancy raiyats. The provision that the raiyat is not to be evicted until the amount of compensation is paid is also borrowed from the Irish Land Act (see *landholding*, page 307). But an examination of that Act will show that the class of tenants to which this particular provision applies in that country is altogether different from the non-occupancy raiyats of the Tenancy Bill. Then in Ireland the *unreasonable conduct* of the tenant is to be taken into consideration. Such a provision is wholly omitted from the Tenancy Bill, which is to be applicable to a country where unreasonable conduct on the part of agricultural tenants is certainly not less common than in Ireland. I think it will not be found that in any other country in the world, in which a tenant is allowed compensation for improvements, the landlord's power of ejectment is clogged with the provision that he cannot evict the tenant, though entitled so to do, until the amount of compensation has been actually paid. In Prussia a tenant is entitled to compensation only for improvements made with the sanction of his landlord (*landholding*, page 57). In France, in the absence of an agreement, the tenant is not entitled to compensation for improvements (*idem*, page 65). In Wurtemburg a tenant may claim compensation for improvements by which the letting-value of the property is increased, but if the parties cannot agree to the amount, the tenant must bring his action against his late landlord (*idem*, page 4). In Baden, in the absence of any agreement to the contrary, the improvements made by a tenant become the landlord's property without compensation (*idem*, page 78). In Saxe-Coburg Gotha, improvements are matter of contract (*idem*, page 87). In Belgium the tenant is entitled to compensation for unexhausted improvements only when made with the consent of his landlord (*idem*, page 92). In Sweden improvements are generally made by the tenant without the landlord's assistance, and yet the tenant has no definite legal right to compensation (*idem*, page 111). In Geneva, without an agreement, there is no right to compensation (*idem*, page 112). In Austria the law recognizes the tenant's right to compensation, which must, however, be enforced by a claim made within six months after the termination of the tenancy (*idem*, page 117). In Lombardy improvements made by a tenant without the landlord's consent do not entitle him to compensation (*idem*, page 120). In Southern Italy the tenant has no legal right to compensation for improvements not specified in the lease (*idem*, page 125). In Greece, if the tenant makes improvements in the absence of any express stipulation, the landlord will have a legal right to them on assuming possession of the holding (*idem*, page 144). In Spain the tenant is entitled to retain possession until he has received compensation, but only in the case of improvements made with the consent of the landlord (*idem*, page 155). In Portugal a similar rule obtains (*idem*, page 164). In the Province of Constantinople the landlord, upon taking possession, may appropriate all improvements, and the tenants cannot enforce any claim to compensation (*idem*, page 218). In the United States of America, in the case of agricultural improvements made by a tenant without any special agreement with his landlord, there is no right to compensation (*idem*, page 379). It will thus appear that the provision with which sub-section (2) proposes to clog the landlord's right of eviction in the case of a non-occupancy raiyat finds no parallel in any other country in the world. This and other provisions of the Bill have clearly the object of rendering it almost impossible for a zemindar to re-enter upon land to the possession of which he has once admitted any *raiyat*; and thus it is supposed that the acquisition of the right of occupancy in the *remaining lands* will be facilitated. The only possible loophole for avoiding this result which is offered to the zemindar is by litigation, intricate, tedious, and expensive, in which, if he succeeds, it will be at a cost greater than the benefit thereby obtained. Surely it would be far better for the interest of all concerned to carry out the intended policy by provisions going directly to this end rather than encourage litigation, which must do incalculable mischief, and which can benefit only legal practitioners and the court-fee revenue. As to *sub-section* (5), who will pay the Assessors, and what will be the natural result if they are not properly remunerated for their services?

Provisions as to compensation for improvements in other countries

Provisions as to compensation for improvements unsuited to the country.

§ 75.—*Section* 94.—These provisions are far too elaborate to be of useful practical application in the Lower Provinces. In a flat country, where there is an alluvial soil, those works by which agriculture is facilitated and improved in other countries are unnecessary and are never undertaken. In Behar, and perhaps in some other places, works of irrigation

are of very great importance, but such works in order to be really useful must be carried out on a scale and at a cost wholly beyond the ability of individual raiyats. The proposed provisions of the Bill, if called into operation at all, will be utilized only for the purposes of idle and harassing litigation.

Provisions as to surrender of holdings unfair in view of the other changes made by the Bill.

§ 76. *Section* 95.—A raiyat, that is *any* raiyat, whether an occupancy or a non-occupancy raiyat, may surrender his right and interest in his holding. It follows, therefore, that an occupancy raiyat may retain the land, subject to a possible enhancement of 25 or 50 per cent. every fifteen years, although the increasing beneficial interest to him may be much greater: but if anything occurs to make the land unprofitable, he may return it upon the hands of his landlord. It will be borne in mind that the interest of the occupancy raiyat is converted by the Bill into a transferable holding from which he cannot be ejected. According to the custom of the country such an interest cannot be relinquished. It is taken for better for worse. *Qui sentit commodum sentire debet et onus* is natural equity. Why should a tenant who is made more than half proprietor be allowed to enjoy all the advantage of this position and impose all the disadvantage of his larger share upon the co-proprietor of the smaller interest? I may here observe that the Bill makes no provision for a case in which a town suddenly springs up and agricultural land is required for building sites. If the raiyat converts his agricultural land into building sites, his landlord may sue to eject him under the provisions of section 31 (*d*); and if he succeed in so ejecting him, may enjoy the full benefit of the new value added to the soil. If the ejectment suit fail, this whole value will go to the raiyat. Then again the raiyat, in order to avoid eviction, may refuse to give the land, may oppose the march of progress, and withstand the requirements of advancing society.

No provision for the growth of a town.

Notice of surrender.

§ 77.—The three months' notice in *sub-section* (2) should be three months before the end of the year. I may observe that three months' notice is usually made by the Bill sufficient for the raiyat to give to his landlord, while six months' time is required when the landlord is to give notice to the raiyat. I do not understand the grounds of the provisions contained in clauses (*a*) and (*b*) of sub-section 3.

Abandonment.

§ 78. *Section* 96.—The objections to this section advanced by the East Bengal Landholders' Association, at page 7 of their paper, are entitled to consideration. As to sub-section (3), what is the ground upon which a raiyat will be entitled to institute a suit?

Holdings not to be divisible.

§ 79. *Section* 97.—The language of this section does not clearly bring out the essential point with which the landlords are concerned, namely, that there should be no division of rent without the consent of the landlord.

Is it intended that landlords should have the power to measure lakheraj lands.

§ 80. *Section* 99.—I presume that this section, as drafted in the Bill, is intended to allow the measurement of *lakheraj* lands; but the use of the word "landlord," having regard to definition of the term in section 3, will at once raise the question whether any land can be measured other than land held by tenant under the landlord? If it be intended to give zemindars and tenure-holders authority to measure *lakheraj* land for which they do not receive rent, the question will be raised in many instances whether such land is comprised in their estate or tenure. In the case of *lakheraj* alleged to have been created before the Permanent Settlement, and, therefore, not comprised in the estate for which the revenue is payable, the zemindar will have no right to measure until he has disproved the allegation of *lakheraj*. The use of the words "estate or tenure" precludes, I presume, an occupancy-raiyat from measuring the land in his holding, especially if he have under raiyats and they object. If this view be correct, an occupancy-raiyat will have one more inducement to convert himself into a tenure-holder (see *ante*, § 28). The provision in sub-section (2) as to "the written permission of the Collector" is, I think, a very useless one. The discretion intended to be conferred cannot be properly exercised without making enquiries which will occupy considerable time. An enquiry will seldom or never be made, and the permission when accorded will be given at haphazard. I may observe that the important words of the old law, which preclude a landlord from making a measurement, when restrained by express agreement with the occupants of the land, have been omitted, no reason being given for their omission. With respect to *sub-section* (2), clause (*a*), the words "vary from year to year" will often be inapplicable to existing facts. The area may remain unaltered for one year or several years, and then there may come successive years of alteration. In few instances does the alteration take place uniformly from year to year.

Collector's written permission to measure oftener than once in ten years.

Standard of measurement in local area.

§ 81. *Section* 101 (3).—What is a local area? Taken literally, it might include an entire Province, which can scarcely have been intended. I think the provisions of clause (*b*) of section 76 of the Commission Bill, as to the determination of the standard pole and the appellate tribunal, have been unwisely omitted.

Appointment of co-owner as manager.

§ 82. *Section* 105.—I do not approve of the provision which allows one co-owner to be appointed manager. The only case in which such an appointment should be made is when the other co-owners consent.

Remuneration of Managers.

§ 83. *Section* 107.—Provision ought to be made for remuneration partly by fixed salary and partly by percentage.

Section 109.—I think the rules defining the powers and duties of Managers would much more properly be framed by the Board of Revenue than by the High Court.

Section 110 (2), *cl.* (*b*) —"calculated"—in whose opinion?

Application by proprietor or tenure-holder to have record-of-rights made.

§ 84. *Section* 112.—It is not quite clear whether it is intended that an application may be made by a proprietor or a tenure-holder *otherwise than when an order has been made by the Local Government under section* 110. This is a point upon which no doubt should be left. The provisions of this section will be advantageous to auction-purchasers: but in every case in which they will be applied, they will yield a large crop of litigation.

Inexpedient to transfer to Revenue authorities original jurisdiction in certain matters.

§ 85. *Section* 114.—There are several of the matters specified in section 111, the power of dealing with which cannot be transferred to the Revenue authorities without taking away from the Civil Courts of First Instance a jurisdiction which can more properly be exercised by them. I do not think that any subsequent appeal to the Special Judge, or second appeal to the High Court, will ever set right errors committed in the Court of First Instance by Revenue Officers, who have not judicial habits or training. I have seen a good deal of the work done by Revenue Officers, more especially before the transfer of rent suits to the Civil Courts by Act VIII (B C.) of 1869; and as the result of my experience I consider these officers much less competent than Munsifs. There is at present no judicial work in the country worse done than that of uncovenanted officers in their capacity of Deputy Magistrates.

Local jurisdiction of Special Judges.

§ 86. *Section* 115.—Some provision seems necessary for appointing the local limits of jurisdiction of the Special Judges.

Settlement of rents by Revenue Officers.

§ 87. *Section* 118.—I understand "settling rents" to include enhancement of rents, where enhancement is allowed by the Bill.

Sub-section (5).—By what Court or authority may this decree be executed? May it be executed by the Revenue Officer, if there is no appeal; and if so, by what provisions shall the execution be governed?

Sub-section (6).—I think it very undesirable that the High Court, upon an appeal as to questions of law only, should have to deal with questions of fact.

Prices of staple crops.

§ 88. *Section* 125.—Here also, I think, the average prices ought to be those of "staple crops," not of "staple *food* crops" The limit of enhancement, four annas in the rupee, contained in the proviso, is too low.

Recovery of settlement expenses.

§ 89. *Section* 133.—"The proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of land revenue due by him," *i.e.* recoverable under the certificate provisions of the Public Demands Act, VII (B.C.) of 1880. Why not say this in so many words? See section 7 (9) of this Act.

Record of khamar land.

§ 90. *Section* 136.—I am afraid that the provisions of this section will be used by raiyats to harass their landlords. I may observe that the Bill speaks only of a *proprietor's* private lands, but where the zemindar has virtually become an annuitant, and the real proprietary interest has passed to a tenure-holder, as in the case of *patni* tenures, the khamar land belongs to the tenure-holder. This is a fact which should not be lost sight of.

What tribunal can best try whether land is khamar.

§ 91. *Section* 137.—I think the revenue officers are not the tribunals best fitted to try, in the first instance, whether land is a proprietor's private land. The questions raised in a case of this kind are those which a civil court is most competent to deal with, inasmuch as they will depend upon evidence of particular facts.

Custom and presumption as to khamar.

§ 92. *Section* 138 (1), *clause* (*b*).—I am afraid that there is no such thing as "village custom" to regulate what is *khamar* land in these provinces.

Sub-section (2).—I think the presumption at the end of this section is not fair,—namely, that the court shall presume that land is not a proprietor's private land until the contrary is shown. I do not see why everything should be presumed against the zemindar.

Provisions of the Bill as to distraint deserve a fair trial.

§ 93. I think that the provisions of chapter XIII as to *distraint* are deserving of a fair trial. They in reality offer to landlords a summary remedy for the recovery of a year's rent; and as they may be put in force before the crop is cut, or is ready for cutting, they ought to afford a useful remedy in those cases in which raiyats conspire to refuse payment of rent even at the previous rates.

Application for distraint should be allowed on small court-fee stamp.

§ 94. The application for distraint under section 139 ought to be upon a reduced court-fee stamp in order to make these new provisions of the law really practicable in aid of the zemindars. Where the raiyats in a body withhold their rents, and the resources of the landlord are in consequence crippled, the imposition of a high institution-fee prevents him from utilizing the provisions of any procedure for the recovery of his rents.

§ 95. *Section* 140 (2).—The second clause of the sub-section is unnecessary, regard being had to the form of verification in the Code of Civil Procedure, and the definition of *giving false evidence* in section 191 of the Penal Code. Similar words have been for this reason omitted from the present Code of Civil Procedure.

Verification of application.

§ 96. *Section* 143 (3).—"Outer door of the house" assumes that the houses in this part of the country have doors; but very many of the houses in the Bengal districts have no doors. For "the outer door of the house" I would substitute "some conspicuous part of the homestead."

Section 154 (3).—"Afford full protection"—against whom? Take a Backergunge case in which the fourteen degrees (see Digest, page 2, *note*) of interest in the soil are complete. Will a receipt granted by the *zemindar* at the top to the *karshâdar* at the bottom afford full protection against all the intermediate holders? If this is intended, it should be made more clear.

Receipt for rent paid by under-raiyat upon distraint.

§ 96. *Section* 159.—The Supreme and not the Local Government should be vested with the power of approval mentioned in this section; and having regard to the provisions of section 163, it should be provided that the rules must be consistent with the Act.

Rules modifying the application of the Code of Civil Procedure to rent suits.

§ 97. *Section* 163.—The provisions of the Code of Civil Procedure relating to *interrogatories* and *discovery* are not generally necessary for the trial of rent suits. Nevertheless, I think there ought to be a provision similar to that contained in the proviso to section 165 of the Commission Bill, which allowed the District Judge, upon application, to direct that any particular suit shall be governed by all the provisions of the Code of Civil Procedure. The provisions of the Code as to *affidavits* continue to be applicable to the trial of rent-suits under the provisions of the present Bill. It was before considered that they should not be applicable (see Supplement to the *Gazette of India*, dated 3rd March 1883, page 303). No reasons have been given for the change.

Provisions as to interrogatories and discovery, though not generally applicable, may be necessary in particular cases.

Clause (*f*).—It would seem that some such words as "unless the court otherwise think fit" should be inserted in this clause. There may be cases in which it will be very desirable that the evidence of particular witnesses should be recorded in full.

Record of evidence.

§ 98. *Section* 164.—The provisions of sub-section (1) are in principle good, but I am afraid that in practice they will have little efficacy. Once they are known the defendant will plead that he has actually paid the amount to the third party.

Payment into court of rent admitted to be due to a third party.

§. 99. *Section* 165.—These provisions appear reasonable enough; but the very fact of having to undergo the expense of defending a suit will occasionally make it difficult for a poor cultivator to pay in the amount admitted. No doubt the provisions of the following section as to payment by instalments to a certain extent mitigate possible hardship.

Payment into court of admitted portion of claim.

§. 100.—*Section* 168, *clause* (*a*).—I think decrees of Subordinate Judges in appeal may properly be made final. As to the second paragraph of clause (*b*), the question most commonly raised is as to the existence of the relation of landlord and tenant between the parties. It has been decided that no appeal lies where this question has been determined. It may be a matter of consideration whether an appeal ought not to be allowed in this particular case. As to the *proviso*, it is no doubt intended that the provisions of section 670 of the Code of Civil Procedure shall also apply to these cases

Appeal and revision.

§ 101. *Section* 170.—The plaint should state the fact of the landlord having requested the tenant to remedy the damage or breach, giving sufficient detail as to time and place. I do not approve of *sub-section* (3), which allows the court to extend for an unlimited period the time for payment of damages in lieu of forfeiture. Finality in this kind of litigation is especially desirable; and under this provision finality will be difficult of attainment.

Plaint in ejectment suit on the ground of forfeiture.

§ 102. *Section* 171, *clause* (*c*). I think it will be found that there is no local usage as to cultivating or preparing the land for a crop after the commencement of ejectment proceedings.

Local usage.

§ 103. *Section* 172 (1).—These provisions, as to the court determining all matters in dispute between the parties, are much too wide; and will, I am afraid, lead to protracted litigation, when the parties are at feud. Then consider the effect of explanation II to section 13 of *the Code of Civil Procedure* upon claims which might have been, but were not, brought forward.

Section 173.—I see no objection to the provisions of this section. But when the court grants this form of relief, will the tenant be bound to hold the land and pay the rent; and if so, for what term?

§ 104. *Section* 176, *clause* (*a*)—Speaks of an "under-tenure," and clause (*d*) speaks of a right of occupancy within a holding. I have elsewhere pointed out that this phraseology is contrary to popular and received ideas. Does clause (*e*) apply to a right to hold for ever?

The terms "under-tenure" and "holding" used in a sense different from that hitherto accepted.

§ 105. *Section* 177, *clause (a)*.—Is an easement, acquired by twenty years' prescription, protected from avoidance by sale? In other words, is the prescription good against the landlord as well as against the tenant?

Is a prescriptive easement an incumbrance?

§ 106. *Section* 178.—For "*the* holding" in line six read "*such* holding." It is no doubt intended that the holding to be sold and the holding in respect of which the decree for rent was made shall be the same.

§ 107. *Section* 184.—It is quite possible for a purchaser to have had notice of the incumbrance a year before the sale, in which case under the literal provisions of this section it would be impossible for him to take steps to avoid it. The period of one year should run from the time after sale when he had *knowledge* or *means of knowledge* of the incumbrance.

Period for avoiding incumbrances.

Sub-section (3).—Service will be denied, and the same difficulty that has been experienced in respect of enhancement notices will destroy the value of this provision.

§ 108. *Section* 187 (2).—By whom may the amount of the decree be paid into court—by the judgment-debtor only, or by any third person also? I think the provisions of section 205 of the Commission Bill which dealt with this question, and which are founded upon the result of actual decisions, ought not to have been put aside.

By whom may payment be made into court to stay sale of holding.

§ 109 *Section* 188.—The provisions of section 205 of the Commission Bill in respect of the privileges conferred upon under tenure-holders by sections 138 and 139 of the same Bill for the protection of their under-tenures have not been effectually reproduced in the present Bill. For example, under tenure-holders have not, under the present Bill, power to lodge money antecedently to meet arrears. I know of no reason why this portion of the law should be altered to the prejudice of these persons.

Provisions of the Bill as to protection of under tenure-holders incomplete.

§ 110. *Section* 190 (2).—What is the sanction by which it is intended to enforce this prohibition against judgment-debtors purchasing their holdings, and how is it proposed to prevent *benami* purchases?

Judgment-debtors not to bid for their holdings.

Section 191.—This is, in part, a repetition of the provisions already contained in section 163, clause (*a*).

§ 111. *Section* 192.—I think this is a very dangerous provision. It suggests the manufacture of incumbrances which will be concocted, antedated, and registered under this section.

Incumbrances created before the Act.

§ 112. *Section* 193.—What is the object of notifying the incumbrance to the landlord? What action can he take upon its being so notified?

Object of notifying incumbrances to landlord.

§ 113. *Section* 194.—As already pointed out, the language of this section limits to *patni* tenures only the procedure of the old Regulation which, according to its provisions, was applicable to a much wider class of tenures, namely, tenures upon which the right of selling or bringing to sale for an arrear of rent has been specially reserved by stipulation in the engagements interchanged on the creation of the tenure (clause 1, section 8, Regulation VIII of 1819). This error is not remedied by the provisions of section 209, which allows an extension of the summary sale provisions to other tenures registered under a law to be passed hereafter. Until that law shall have been passed, the right to bring to summary sale tenures other than *patni* tenures included in the larger class just mentioned will remain suspended to the serious prejudice of the landlords.

Serious defects in reproducing the law as to the summary sale of tenures.

§ 114. *Section* 196.—I do not think that the use of the word "notice" in this section as an improvement on the language of the old law, which speaks of a copy or extract of such part of the notice as applies to the individual case.

Other defects in the reproduction of the summary sale law.

Section 196.—I think the matter of the explanation to section 134 of the Commission Bill has been unwisely omitted. That explanation was to the effect that service on the defaulter personally is not sufficient. This is the result of decided cases, and should be embodied in the existing law.

§ 115. *Section* 198.—The provisions of section 137 of the Commission Bill have not been accurately reproduced. The old law has been altered in such a way as to create an opening for litigation.

Opening for litigation afforded by altering language of the old law.

Sub-section 5.—This does not govern the case provided for by clause *(c)*, section 137 of the Commission Bill, viz. the case of omitting to apply for a summary investigation which is not *ejusdem generis* with the cases provided for by sub-sections (3) and (4).

§ 116. *Section* 202 (2).—The result of a summary sale will differ from the result of an execution sale, so far as regards registered and notified incumbrances. The East Bengal Landholders' Association have urged that this distinction will be productive of confusion and consequently of litigation, and I think their observation merits consideration.

Different effect of summary and execution sales.

§ 117. *Section* 203.—The provisions of clause *(b)* and (*c*) of section 143 of the Commission Bill have been omitted from the present Bill to the prejudice of the parties concerned. This remark applies more especially to that provision which obliges the proprietor

Omission of important provisions of the old law.

to furnish to the purchaser access to any papers connected with the tenure purchased, that may be forthcoming in the proprietor's *kachahri*.

§ 118. *Section* 204.—As pointed out in section 109, the provisions of sub-section (2) of section 138 of the Commission Bill, as to lodging money antecedently to meet arrears of rent, have not been reproduced; and the same remark applies to so much of the provisions of clause *(a)*, section 139, as provide that a deposit may be carried to the account of the tenant, so as to be in satisfaction of any claim of rent that may then be pending, or that may thereafter be brought against him.

Provision as to indemnification of purchaser when sale set aside.

§ 119. *Section* 205 (2).—These provisions do not satisfactorily reproduce clause (*c*) of section 136 of the Commission Bill, which empowers the court to *indemnify* the purchaser against all loss at the charge of the proprietor or person at whose instance the sale is made.

Arrears of previous years not to be recoverable by summary sale.

§ 120. *Section* 207, *clause* (*b*).—The proviso in section 145 (2) of the Commission Bill as to arrears of previous years has been inadvisedly omitted. It has hitherto been the law, and it should be made clear that arrears of rent of previous years are not recoverable by summary sale.

Provisions of the Bill which forbid contracts between landlords and tenants inexpedient.

§ 125. *Section* 210.—I cannot approve of these general provisions by which landlords and tenants are debarred from adjusting their mutual relations by contract. The reasons for these provisions are contained in paragraph 33 of the *Statement of Objects and Reasons*, and repeated in paragraph 85 of the despatch of the Government of India, No. 6 of the 21st March 1882, in the following words:—"Such is the power of the zemindars, so numerous and effective are the means possessed by most of them for inducing the raiyats to accept agreements which, if history, custom, and expediency be regarded, are wrongful and contrary to good policy, that to uphold contracts in contravention of the main purpose of the Bill would be in our belief to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed, and in this conclusion we have the support not only of the Bengal Government, but also of the unanimous opinions of the Bengal officers." Whatever truth these observations may have with reference to Behar, I deny that they are generally accurate as regards Eastern Bengal. In that portion of the country the raiyats are, according to my experience, very competent to protect their own interests in matters of contract, and the insolated instances of over-reaching *pattas* or *kabulyats* which have been or can be produced do not afford sufficient evidence to justify these disabling provisions of the Bill, by which the whole agricultural population is to be declared incompetent to contract with their landlords. It would be equally reasonable to say that, because there are annually in any country a certain number of cases in which contracts or wills are found to have been made under undue influence, the entire community should be disabled from making contracts or wills.

Argument for disability contradicted by admitted facts.

§ 120. In one of the speeches made in Council upon the introduction of the Bill there is the following passage[1]:—"I am aware that the rise of the jute industry has poured considerable wealth into these districts" (Backergunge, and some of the adjoining districts). "But when this wealth accrued, what was the first use to which it was turned? The cultivators knew well enough that the acquisition of a proprietary right in the soil was essential to their permanent welfare, and accordingly we find that the first use to which they turned their newly-acquired wealth was to take every opportunity of acquiring such right. The statistics of registration show that in the three years 1877-78, 1878-79, and 1879-80 no less than 342,596 perpetual leases were executed in Bengal, by far the greater portion of which were executed in the districts of Jessore, Backergunge, Furreedpore, Noakhali, and Chittagong." There is no suggestion that the persons who obtained these leases were unable to protect their own interests or were over-reached or duped in the matter of these contracts. They are, and are referred to as, indications of healthy progress and prosperity: and they furnish a powerful argument against legislative interference with persons who, at least in those parts of the country, are able and willing to manage their own affairs. It is a curious comment upon nearly a century's British administration of these provinces that while, in 1793, contracts between zemindars and raiyats were considered to be the great panacea for all evils and all difficulties arising out of the relations of landlord and tenant,(*) we are now in the year 1884 proposing to go into the opposite extreme and prohibit landlords and tenants from adjusting their own relations by mutual agreement between themselves. One necessary result of this provision will be to force the parties concerned into court upon every occasion upon which any question concerned with the mutual relations of the immense agricultural population of these provinces has to be adjusted. The enormous amount of litigation which will thus be engendered cannot but be productive of the worst consequences, affecting the harmony of society and the morality of the community; and must seriously tax the resources of the State to find suitable agency for its disposal.

May a zemindar make a grant of rent-free land?

§ 121. *Section* 211.—Is it intended that a landlord may make a grant of *lakheraj* or *rent* free land? Section 226 would appear to suppose that he may; but the point is one upon which no doubt should be left. Such a grant should of course be good only as against

---

[1] See *Supplement* to the *Gazette of India*, of the 21st April 1883, page 890.

[2] I have so fully shown this elsewhere (see *Landholding*, pages 482, 494, 503, 504, 582 *note*, and 590) that I abstain from increasing the length of this minute by reproducing the facts and arguments.

him and those claiming through him, and should be voidable upon a sale for arrears of Government revenue.

Reclamation contracts.

§ 122. *Section* 212.—What is the meaning of the words "contract for the reclamation of waste land?" Are they to be strictly limited to *reclamation*, or do they include a *tenancy*, such as that created by a *jangalburi* lease upon the basis of reclamation and investment of labour and capital by the lessee?

Local custom as to homesteads.

§ 123. *Section* 216.—The provision as to local custom looks very well upon paper in an Act of the Legislature, but my experience shows that evidence of such customs is never forthcoming.

Provisions as to limitation.

§ 124. *Section* 219.—Implies that the whole of the Limitation Act, with the exception of sections 7, 8, and 9, is to apply to suits under the Bill; but why should sections 10 and 11 and Part IV of the Act be applicable to such suits? Section 94 of the Commission Bill, which embodies an important principle (the result of litigation finally dealt with by the Privy Council), has, I think, been inadvisably omitted.

Constructive offences connected with distraint.

§ 125. *Section* 220 (1).—I do not see the utility of the fiction in criminal law here proposed to be created. It is slightly incongruous that resistance to distraint, or forcibly or clandestinely removing distrained property, should be deemed to be criminal trespass. Why not make these acts substantive offences punishable with specific punishments?

Evidence of agency.

§ 126. *Section* 221 (2).—This provision as to agents being empowered by written authority will be productive of litigation and injustice. The written authority will be denied and suppressed. Surely it ought to be sufficient to show that the agent acted as such with the knowledge of his landlord.

Exemption of Government from the twenty years' presumption.

§ 127. *Section* 225.—I do not see why the Government should here retain for itself a special privilege which is not allowed to private landlords.

I proceed to examine the principles of the measure, an opportunity of expressing my opinion upon which has not before been offered me.

§ 128. Having examined the sections of the Bill in detail, I now proceed to consider some of the principles which have been accepted and adopted in determining the main lines of the proposed enactment which is at present before the Legislative Council. Since I closed my connection with the Rent Commission in June 1880, no opportunity has been offered me of expressing my views upon the general principles of this very important measure. As my judgment and opinion were well known to be opposed to the extreme views pressed upon the members of the Rent Commission, and which failed to convince the majority of them, but were subsequently adopted by the Lieutenant-Governor of Bengal and the Supreme Government, I assumed that Government did not wish to hear further criticism from me of the principles which have been adopted as the main lines of the present Tenancy Bill; and I therefore abstained from volunteering any opinion. In letter No. 785 of the 5th May last, from the Secretary to the Government of India in the Legislative Department, it is now said that the Government of India will be glad to receive any remarks which the Judges may think fit to offer on the provisions of the Bill as amended by the Select Committee. I understand from this that it is now intended to offer me, in common with the other Judges of the High Court, an opportunity of placing our views upon record; and I think it due to myself, to the interest which I have taken in the whole subject for the last four-and-twenty years, and to the share which I took in preparing the original Bill, to express my sentiments without reserve on the present occasion.

Infringement of proprietary interest by taking from the zemindars the right of letting as they please lands not in the possession of occupancy-raiyats.

§ 129. One of the most serious infringments of proprietary interest proposed by the Bill is the taking away from the zemindars the right of letting in any manner they please lands not in the possession of occupancy-raiyats or other protected classes of tenants. Throughout the whole of the discussions upon the Bill, it has been assumed that from 70 to 90 per cent. of the land in these provinces is already in the possession of occupancy or other protected raiyats, and the Bill now professedly proposes to create, or facilitate the immediate creation of, the occupancy right in the remaining lands, either directly or by indirect means, which must in a short time bring about this result. In the despatch of the 21st March 1882 from the Government of India to Her Majesty's Secretary of State, the arguments in support of this change are given in the following language, which I quote *in extenso*:—

"52. The Famine Commissioners observe in their report[1]:—'One of the most prevalent forms of oppression on the part of the landlords is their habit of breaking up the holdings of their tenants, and compelling them to change the fields they cultivate, with a view to the destruction of occupancy rights, or rendering them indistinct where they exist, and preventing the accrual in the case of tenants-at-will.' We have reason to believe that practices of this kind do, in fact, prevail in many parts of India. In the North-Western Provinces during the year 1878-79 the increase of the number of notices of ejectment was marked in every division and in every district, and the Board of Revenue[2] observed that the proprietary classes had exhibited a very general anxiety to prevent tenants and lessees from acquiring occupancy rights. In the following year the Commissioner of Allahabad reported,[3] as the twelfth year of occupation approaches, notices are invariably served.' 'Landlords,' said the Board, 'are naturally enough anxious to prevent the growth of occupancy tenures, and the Local Rent Act virtually points out to them the easiest way of effecting this object, viz. by ejecting tenants-at-will before the twelve years' occupation, which creates a right of occupancy, is completed.' The efforts of the proprietors to extinguish occupancy rights have been frequently noticed in reports from the Central Provinces. In 1874-75 the Deputy

[1] Report of Famine Commission, Part II, page 119, para. 27.
[2] Board's Report, page 28.
[3] Board's Report, 1879-80, pages 26-27.

Commissioner of Jabalpur had 'seen many instances where the *malguzars* are carefully causing their tenants to give up the land they have held for 11 years in order to prevent their acquiring occupancy rights.' The Deputy Commissioner of Seoni stated that the absolute occupancy and Act X occupancy-holders were being slowly but surely ousted by the *malguzars*. In 1875-76 systematic attempts to prevent tenants from acquiring rights under Act X appear to have occurred in the Jabalpur district. In 1877-78 the Chief Commissioner wrote [2]:—'There is no doubt a general cause at work which is calculated to produce a gradual increase in the number of suits for ejectment, *viz.* the desire of *malguzars* to prevent the accrual of occupancy rights which leads them, as the end of the twelve years period since the settlement approaches, to take more and more active steps to eject those tenants who would otherwise, by continued occupation, pass out of the class of mere tenants-at-will.' The Deputy Commissioner of Saugor, in 1878-79, speaking of occupancy tenants and occupancy rights, said [3]:—'There is a strong animus against these tenants among all the *malguzars* of this district, and (as in other districts) they use their best efforts to oust every tenant who has succeeded in acquiring those rights, and do their best to prevent any such further acquisition, by applying to the court to issue notices of ejectment on all tenants who have held for nearly the prescribed time.' In the report, however, for the year 1879-80 the Chief Commissioner observed:—'The eventual result of a twelve years' occupancy rule, or an occupancy rule laying down any fixed period for the accrual of occupancy right, must ordinarily be to cause a disturbance of possession in order to check the growth of a class of privileged ryots. Any such rule is disastrous to the well-being of the cultivating class wherever there is a struggle for land. In these provinces, in most districts, there is no such struggle, and as a fact the occupancy right is allowed to accrue in a large number of cases.

"53. In Behar it is said that not one quarter per cent. of the ryots hold pottahs; and 'an examination of the *jamabandi* papers (rent-rolls) of Behar estates has shown that while 60 per cent. of the present raiyats have held some land in the villages in which they reside for more than twelve years, less than one per cent. of them held at present the same area of land which they held twelve years ago. Inasmuch as these raiyats hold no *pottahs* or other documents showing which are the particular fields which they have held for more than twelve years, and which fields were subsequently acquired, it is doubtful whether any of them could, under the existing law, prove their occupancy rights even where these rights exist beyond all doubt.' The Collector of Patna reports that whenever the zemindar has felt himself strong enough to break occupancy holdings, he has done so, and that the landlords are very active in shifting the tenants from time to time to prevent the acquisition of occupancy rights. The zemindars of Shahabad, at a meeting held on 30th October 1880 at Arrah, deprecated the concession to resident raiyats of rights of occupancy of lands held by them for three years. 'At present,' the zemindars said, 'land-owners prevent the growth of occupancy rights by granting leases for five years only, or by changing the lands, or by managing so that a raiyat shall never hold at the same rent for twelve years. In practice, the last expedient is found sufficient, as the courts find claims to occupancy rights not proved, unless the raiyat can show that he held the same land for twelve years by proving that he paid the same rent. Under the proposed law, the zemindars would not suffer raiyats to remain for three years.' 'Interchange of land,' observes the Officiating Collector of Sarun, Mr. MacDonnell, 'between raiyats in a zemindari occasionally occurs, but it is the rare exception—not the rule. Manipulation by the *patwaris* of the village *jamabandis* to prevent identification of the plot held this year with the same plot held five years ago is of usual occurrence to prevent proof of continuous holding, and to furnish evidence of the contrary, as well as of a change in the rates.' The Maharaja of Durbhunga informed Mr. Reynolds that his present practice was to give leases for ten years, and if the raiyat showed himself a good tenant to renew his lease, and allow him to acquire a right of occupancy, but that if the term were reduced to three years, he would be obliged to eject all his tenants at the end of two years, so as to bar the acquisition of the right.

"54. In Bengal proper, the Commissioner of the Chittagong Division states that most landlords have been taking precautions against allowing their raiyats to obtain occupancy rights. A petition from the cultivators of the Attia sub-division of the Mymensingh district alleges that the zemindars are busy sending their dependents and club-men about from village to village to take leases for limited periods from raiyats likely to be entitled to rights of occupancy under the provisions of the draft Bill of the Rent Commission. The Collector of Purneah asserts that it is the practice in many districts to take *kabuliyats* from raiyats for fixed terms, which are renewed or not at the pleasure of the landlord, and that in this way the accrual of the right of occupancy has been prevented. The Collector of Dacca reports:—'At present, as long as they (the raiyats) pay their rent, they are not in much danger of having their tenancy intefered with, unless the landlord is anxious to prevent their acquiring a right of occupancy.' The Collector of Furreedpore has heard that a large landlord of that district has issued, in anticipation of the enactment of the Bill of the Commission, hundreds of temporary leases for the purpose of preventing the acquisition of rights of occupancy under the new law. Your lordship will have noticed that the Pubna disturbances originated in a case in which the landlord had attempted to obtain agreements from the tenants, admitting that he might eject them on displeasure. Mr. Wace, the Officiating Collector of Birbhum, is of opinion that the tendency of the Bill of the Commission would be to foster the execution of formal leases and to make the insertion of a clause barring the growth of a right of occupancy even more common that it now is. 'There are doubtless many raiyats,' says Mr. Reynolds, 'who have been induced to execute contracts which specify no term of years, but which provide that the right of occupancy shall not accrue, and that the lands shall be surrendered to the zemindar on his demand. The Commissioner of Chota Nagpur refers to the disturbance of rights by extraneous and unauthorised action on the part of the land-owners and to attempts made to deprive the tenant of the privileges which are admittedly vested in raiyats who have held land for twelve years. Mr. Nolan, a Collector who is said by the Lieutenant-Governor to know both Bengal and Behar, believes that occupancy rights are being very rapidly extinguished, especially in Eastern Bengal. Mr. O'Kinealy remarks that twice in the course of the last 70 years have great attempts been made to treat the raiyats of Bengal as tenants-at-will and to reduce them to the position of the *piakhast* raiyats of the North-Western Provinces—*first*, after 1812,[4] when the zemindars, admitting that they could not eject, sought to attain their object by claiming a right to enhance at discretion; and *secondly*, at the present time, when though unable to enhance at discretion, they are seeking the same end by dispossession after notice. Mr. Reynolds holds that it is now the avowed object of the zemindars to restrict and destroy the right of occupancy."

"55. Plainly an Act intended to affirm the then existing occupancy rights of the great mass of the settled cultivators is being deliberately defeated in practice; partly by the assumption, now usually impossible to controvert by judicial proof, that such right did not exist antecedently to that Act, but were meant

---

[2] Annual Report, page 29.

[3] Annual Report, page 20.

[4] The effects of the legislation of 1812 will be found described in *Landholding*, pages 615—620, 626—664, and 670—678. Let the candid reader say whether a different view is not the reasonable one.

to accrue under its provisions, and partly by legal or illegal measures taken by the zemindars under colour of the law and in consequence of that assumption to prevent the accrual of such rights. Whether the fields be changed or evidence be manufactured in the zemindari accounts, or written renunciations of permanent right be extorted from the ignorance or weakness of the peasantry, the object is one which is opposed to public policy. Even if no more decisive step were advisable, it would, we think, be imperatively necessary to provide that shifting occupancy within the same village or estate shall count as continuous occupancy; and to declare, as is proposed in the Bill of the Lieutenant-Governor, that no contract shall in any case debar a raiyat from acquiring the occupancy right. But such provisions would have wide consequences. If the estimate of the Behar Committee may be generally accepted, they would affect not less than 60 per cent. of the raiyats in Behar; nor can it be doubted that the avoidance of past contracts debarring the acquisition of the right would have in Bengal Proper an extensive operation. In these circumstances, as a change involving very far-reaching effects seems inevitable, we think that a complete remedy is more expedient than any partial reform, which, however unavoidable, would have to encounter equally strong opposition."

Examination of the arguments advanced in support of this portion of the measure.

§ 130. Now let us examine these arguments, and while doing so let us have clearly before our minds the proposition to be proved. We have first an extract from a report of the Famine Commissioners unsupported by exact evidence, and having a general applicability to the whole of India. We have then some observations of the Board of Revenue of the North-Western Provinces founded upon facts which have occurred, not in the Lower Provinces, in respect of which the proposition is to be proved, but in the North-Western Provinces, for which we are not about to legislate. Then follows some evidence derived from facts which are said to have occurred in the Central Provinces, and especially in the districts of Jubbulpore and Saugor. If the proposition which is advanced had to be proved—if the issue which is raised had to be determined—in a Court of Justice, proceeding upon accurate principles and logical inferences, the first observation that would here be made is that evidence obtained from the North-Western Provinces and from the Central Provinces is irrelevant to prove a proposition which concerns, and for the purpose in hand must be proved to be true as regards, Behar and Bengal. In paragraph 53 we have a statement as to Behar. It is *said* that an examination of the rent rolls of Behar estates has shown that while 60 per cent. of the present raiyats have held some land in the villages in which they reside for more than twelve years, less than one per cent. of them hold at present the same area of land which they held twelve years ago. Who are the responsible officers who have found leisure to examine all the rent rolls of the Behar estates for twelve years? Where is their report? Where are their figures and calculations? Do not the pressure of population on the soil and the operation of the laws of inheritance furnish other explanations of these varying areas besides that suggested as the only possible explanation, namely, the conduct of the zemindars? Then it is declared to be doubtful whether the raiyats could, under the existing law, prove their occupancy rights even where those rights exist beyond all doubt. Now, clearly an assertion of this kind has not much value as an argument. If it could be shown that the raiyats had attempted to prove their occupancy rights, and had failed altogether or in the majority of instances, this would no doubt be good evidence as regards Behar. But a mere assertion that it is doubtful whether, under the existing law, they could succeed in proving them possesses, in a controversy of the present kind and in the absence of facts, little value as evidence in support of the conclusion to be established. Then it is stated that the Collector of Patna reports that whenever a zemindar has felt himself strong enough to break occupancy holdings, he has done so. This allegation also is unsupported by facts or evidence. It is further asserted upon the same authority and without further evidence that landlords are very active in shifting the tenants from time to time to prevent the acquisition of occupancy rights. Reference is then made to what occurred at a meeting of the zemindars at Arrah on the 30th October 1880, on which occasion they said that the landholders prevent the growth of occupancy rights by granting leases for five years only, or by changing the lands or by managing so that a raiyat shall never hold at the same rent for twelve years. Now this is an admission of an intention on the part of the Behar zemindars—not to destroy the occupancy right where already existing or acquired—but to prevent its acquisition where it does not exist and has not been acquired. What, then, is the charge which this admission proves against the zemindars of Behar? It is a charge of having done that which the law has allowed and still allows them to do. Section 7 of Act X of 1859 [to which corresponds section 7 of Act VIII (B.C.) of 1869] provides that nothing in the preceding section (that is, the section which provides for the acquisition of a right of occupancy by cultivating or holding land for twelve years) shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and raiyat, when it contains any express stipulation contrary thereto. It will thus appear that the zemindars were left by the Legislature at liberty to take their own measures in order to prevent the acquisition of the occupancy right in lands in which no such right had previously existed. I am unable to see the *gravamen* of the charge brought against the Behar zemindars. They have done that which the law allowed them to do, and the doing of which was deliberately contemplated by the Legislature. Then it is said that the Maharaja of Durbhanga informed Mr. Reynolds that his practice was to give ten years' leases, and if the raiyat showed himself a good tenant, to renew the lease, and allow him to acquire a right of occupancy. Surely this course, sanctioned as it is by the Legislature, is merely the action of a prudent landlord.

That they have done what the law allowed them to do made a charge against the Behar zemindars.

§ 131. In paragraph 54 we are told that the Commissioner of Chittagong states that most landlords have taken precautions against allowing their raiyats to obtain occupancy rights. There is further evidence to the same effect—evidence to show—not that the zemindars have violated the law by *destroying* the occupancy right where it exists or has been acquired—but that they have done what the law allows, viz. taken steps to *prevent its acquisition*, when they believed this course to be for their own interest. Then comes the conclusion in paragraph 55 in the following words :—" Plainly an Act intended to affirm the then existing occupancy rights of the great mass of the settled cultivators is being deliberately defeated in practice, partly by the assumption, now usually impossible to controvert by judicial proof, that such rights did not exist antecedently to that Act, but were meant to accrue under its provisions, and partly by legal or illegal measures taken by the zemindars under colour of the law and in consequence of that assumption to prevent the accrual of such rights." I think that any candid, unbiassed, and intelligent person who will examine the arguments advanced and the facts relied upon in support of the conclusion which I have just stated, will unhesitatingly admit that assuming the facts to be correct, the arguments based thereupon do not prove the conclusion. We have evidence that the zemindars have taken the steps allowed and contemplated by the Legislature to prevent the accrual of the occupancy right in land in which no such right existed or had been acquired; but there is no evidence, nothing but mere assertion, that they have destroyed that right where it existed or had been acquired. This being so, it is impossible to say that the Act is being deliberately *defeated* in practice.

Conclusion that the zemindars have defeated the provisions of the Act of 1859 as to the occupancy right not supported by the evidence.

§ 132. The conclusion just stated is presented in still stronger language in the subsequent paragraph of the despatch. It is said in paragraph 59 :—" We entirely concur in the opinion of the Lieutenant-Governor that the substantive law touching the occupancy right must be amended so as to prevent the old and unquestioned privileges of the raiyats remaining in jeopardy and being in many cases broken down." This assumes that it has been proved that the old and unquestioned privileges of the raiyats have in many cases been broken down ; but as a matter of fact this has not been proved. I think there must be great danger in legislating upon the basis of data which have been assumed rather than proved : certainly the substantial rights of land-owners, many of whom are purchasers for valuable considerations upon the faith of the Government sale law, ought not to be destroyed without clear proof that they have abused their powers to the injury of the community.

Danger of legislating upon data which are assumed rather than proved.

§ 133. In paragraph 60 of the same despatch there is the following passage :—" It is thus concluded that in the matter of rent-rates and protection from arbitrary eviction, all raiyats were on a par." I beg leave to challenge the accuracy of this conclusion. In the course of the discussions which have taken place since the Rent Commission of 1879 began their labours, the equal position of all raiyats has been attempted to be proved by arguments of two kinds :—*First*, it was said that any period of residence, however short, and any occupation of land, however brief, were sufficient to create a *khudkhast* raiyat, and thus every person who entered upon possession of land in a village and made his residence there became at once a *khudkasht* raiyat ; *secondly*, it was said in a more general and sweeping manner that the position of all *raiyats* was equal. I will attempt once more to disprove both these allegations.

Conclusion that all raiyats on a par as regards rent-rates and protection from arbitrary eviction contrary to fact.

§ 134. *First*, as to the assertion that any period of residence, however short, and any occupation of land, however brief, were sufficient to create a *khudkasht* raiyat, let me quote some opinions which must be allowed to possess more or less authority. Mr. Justice Campbell said in the Great Rent Case :—

Error of supposing that any residence and occupation of land created a khudkasht raiyat.

"At the time of the passing of Act X of 1859, the state of things was this :—The tenures and rents of the raiyats were still for the most part regulated by the old customs of former times, but two things specially required legal definition :—*First*, there was doubt as to the mode of *prescription* by which a *khudkasht* or occupancy tenure was acquired, and which tenures were of this character. It was not certain whether mere settlement in the village on the ordinary terms without limitation of tenure gave such a right, or what length of prescription established that right."

Mr. Justice Steer said in the same case :—

"That a right of occupancy was acquired by anything short of an occupation from a period prior to the Permanent Settlement—an occupation which entitled the raiyat to be called a *khudkasht* raiyat—has always been, I think, a matter of doubt.

"What raiyats were entitled under the old laws to be *khudkasht* raiyats, and what raiyats were entitled to be considered as raiyats who had acquired a prescriptive right of occupancy, are subjects which, I think, have never been cleared up, either by the express authority of law, or by the authority of any judicial ruling. Are *khudkasht* raiyats then, as spoken of in the Regulations, those, and exclusively those, who were *khudkasht* at the time of the Permanent Settlement, or does the term *khudkasht* embrace also those raiyats who, since the time of the Permanent Settlement, had, by a long residence in the village in which they held and cultivated land, acquired a prescriptive right of occupancy ? These were, I think, even up to the passing of Act X, moot questions, and are so still.

"While no doubt exists as to the right of those raiyats who from generation to generation have cultivated the lands of the village in which they reside for a period antecedent to the Permanent Settlement, and who without any doubt are entitled to be called and classed with *khudkasht* raiyats, the greatest doubt exists as to whether any other class or description of raiyats are entitled to be called *khudkasht* raiyats. If any raiyat, whose tenure came into existence since the Permanent Settlement, can by any means be called a *khudkasht* raiyat at all, it certainly is not the raiyat who simply lives in the village and cultivates the land

of the village. To be a *khudkasht* raiyat at all implies that the raiyat must not only be a cultivator of lands belonging to the village in which he resides, but he must be an hereditary husbandman. A *khudkasht* right is not acquired in a day, but is transmitted; and it has never, so far as my knowledge extends, been laid down what exact length of holding gives a title to a tenant to consider himself a *khudkasht* raiyat.

"Certainly, the old Regulations seem to point to other than those undoubted *khudkasht* raiyats whom the Permanent Settlement found upon the land; but what length of holding constituted a right by prescription has never been definitely or inflexibly laid down. If decisions are to be found in which a prescriptive right was deemed established by an occupation short of the Permanent Settlement, there are, on the other hand, plenty of decisions to show that length of occupancy was not deemed to entitle the tenant to be considered anything better than a tenant-at-will. If any other but the ancient raiyat, occupying from generation to generation, had the right of occupancy, no others had it; and therefore in a vast majority of cases Act X by the twelve-year rule of occupancy has created rights which never existed before."

Mr. Justice Trevor said in the same case:—

"At the time of the Decennial Settlement, the raiyats were in Bengal, as in other parts of India, divided into *khudkasht* or resident, and *paikasht* or non-resident. It has indeed been contended before us that time is of the essence of a *khudkasht* tenure; that a raiyat simply residing in a village, in which his land is, is not a *khudkasht* raiyat; and that, in order to constitute a *khudkasht* raiyat under the Regulations, he must be a resident-hereditary raiyat; and that, if he has not succeeded by right of heirship, he does not fall within that class of tenants. But it appears to me that, whether we look to the etymology of the word, or to the thing itself, there is no reasonable ground for question. *Khudkasht* raiyats are simply cultivators of the lands of their own village, who, after being once admitted into the village, have a right of occupancy so long as they pay the customary rents, and therefore with a tendency to become hereditary, and with an interest in the produce of the soil over and above the *mere wages of labour and the profits of stock*; in other words, above the cost of production.

"These tenants seem at the settlement, practically and legally, though not by express statute, to have been divided into two classes, the *khudkasht kadimi*, and the simple *khudkasht*, or those who had been in possession of the land for more than twelve years before the settlement, and those whose possession did not run back so long. Both by the Hindu and Muhammadan law, as well as by the legal practice of the country, *twelve years had been considered sufficient to establish a right by negative prescription*, that is, by the absence of any claim on the part of other persons during that period; and hence the doctrine which has obtained that *khudkasht* raiyats in possession twelve years before the settlement were, under no circumstances, not even on a sale for arrears of revenue, liable either to enhancement of rent, or eviction from their holding, so long as they paid the rents which they had all along paid."

"But when Regulation XI of 1822 was passed, the use in section 32 of that law of the terms *khudkasht kadimi* raiyat, or resident and hereditary raiyat with a prescriptive right of occupancy, to designate the cultivator, who would not be liable to eviction on a sale for arrears of revenue, gave rise to the doctrine that *khudhasht* raiyats who had their origin subsequent to the settlement were liable to eviction, though, if not evicted, they, under section 33, could only be called upon to pay rents determined according to the law and usage of the country; and also *that the possession of all raiyats whose title commenced subsequent to the settlement was simply a permissive one*; that is, one retained with the consent of the landlord. Again, by Act XII of 1841 and Act I of 1845 (which repealed the former), a purchaser acquired his estate free of all encumbrances which had been imposed on it after the time of the settlement; and he is entitled after notice given under section 10 of Regulation V of 1812, to enhance at discretion—anything in the Regulations to the contrary notwithstanding—the rents of all under-tenures in the said estate, and to *eject all under-tenants with certain exceptions, amongst which are khudkhasht kadimi, but not simple khudkhast raiyats.* It follows that these laws *distinctly gave the purchaser the power to eject a khudkhasht raiyat whose tenure was created after the Permanent Settlement, and if not ejected, they are liable to be assessed at the discretion of the landlord.* This word "discretion" entirely annihilated the rights of the *khudkasht* tenants created subsequent to the settlement in estates sold under these laws. It reduced them from tenants with rights of occupancy, so long as they paid the established rate of the pergunnah, or the rate which similar lands paid in the places adjacent, into mere tenants at the will of the zemindar, who might in any year eject them, and place in their stead any tenant competing for the land. It is, in short, introducing into this country competition in the place of customary rent.

Sir Barnes Peacock gave the following opinion:—

"I do not believe that, even before the Permanent Settlement, every cultivator who resided in the village in which his lands were situate, whether let into posession for a term or only as a tenant-at-will, or to hold from year to year, necessarily became a *khudkasht* raiyat. The definition of *khudkasht* in Wilson's Glossary (287) is a 'cultivator of his own hereditary land.' The words *khud*, self or own, and *kasht*, to show, show that the term has reference to some proprietary rights, rather than to the fact of residence in the village. In column 267 of the same Glossary, tit '*khudkasht*,' the definition is a 'resident cultivator—one cultivating his own hereditary lands, either under a zemindar or a coparcener, in a village.' In Bengal, one class of them holding their lands at fixed rates by hereditary right sometimes sublet them, except the part about their dwelling, in which they continue to reside, and although ceasing to cultivate and engaged in trade or business, they retain their designation of *khudkasht*. The term is also applied in the North-Western Provinces to lands which the proprietor, or the payer of the Government revenue, cultivates himself.

"A *khudkasht* raiyat probably derived his title by descent from or succession to one of the old village community, or some person who in ancient times had acquired a proprietary right in the land under the old Hindu or Muhammadan law by reason of his having reclaimed it. Menu says, 'Sages pronounce cultivated land to be the property of him who cut away the wood, or who cleared and tilled it' (Chapter IX, paragraph 44). So property in waste land was, according to the Muhammadan law, established by reclaiming it with the permission of the Imam according to Aboo Hanifa, and by the mere act of reclaiming it according to Aboo Yusaf and Muhamad (see Baillie on the land-tax of India, Chapter VI paragraph 42). But, however this may be, it is clear that since Regulation II of 1793, *by which the right of property was declared to be vested in the landholders, i.e.*, in the zemindars and independent talukdars, property in land which formed part of a permanently-settled estate could not be acquired by reclaiming it from waste. How then could it be acquired except by contract or adverse possessions or by prescription going back as far as to the time of the Permenant Settlement? I am of opinion that neither a right of proprietorship nor a right of occupancy could have been acquired by any other means in a permanently-settled estate.

"The Directions to Revenue Officers, paragraph 130, show that the right depends upon *prescription*. It is there said—'It is impossible to lay down any fixed rule defining what classes of cultivators are to be considered entitled to hold at fixed rates. They are known in different parts of the country by different names, as *chapperbund, khudkasht, khadimi, maurossi hukdar, &c.*, all of which terms imply attachment to the soil or *prescriptive* right. Those who have no such right are commonly called *kutcha assamis* or *paikashts*. It has sometimes been supposed that all raiyats resident in the village *(khudkasht)* are of the former class, and that those who reside in another village *(paiasht)* have no rights. But there are frequent

exceptions to this rule. Many cultivators residing in the village are mere tenants-at-will, whilst those residing in neighbouring villages may have marked and recognised rights. *Prescription* is the best rule to follow

"I am clearly of opinion that a raiyat who, after the date of the Permanent Settlement, and especially after Regulation V of 1812, was let into possession by a zemindar to hold as tenant for a fixed term, or at will, or from year to year, or without defining the period during which his tenancy was to continue, did not, before Act X of 1859, merely by reason of an occupation of twelve years, become a *khudkasht* raiyat."

Mr. Shore (afterwards Lord Teignmouth) considered that the rights of the raiyats depended upon long occupancy, and Mr. Harington in his Analysis quotes him on several occasions. The following are a few brief passages:—"It is understood that the raiyats by *long occupancy* acquire a right of possession in the soil, and are not subject to be removed.' . . . . . "To require that the pattas should be given for a definite time, as proposed by some of the Collectors, would diminish the force of that *prescription* which has established a right of occupancy in favour of the raiyats." . . . . . "On the whole, therefore, I do not think the raiyats can claim any right of alienating the lands rented by them by sale or other mode of transfer nor any right of holding them at a fixed rent except in the particular instances of *khudkasht* raiyats, who, *from prescription*, have a privilege of keeping possession as long as they pay the rent stipulated for by them.'" The opinion of the Legislature may be inferred from Act XII of 1841, section 27, which speaks of "*khudkasht* or *kadimi* raiyats having rights of occupancy at fixed rents, or at rents assessable according to fixed rules under the Regulations in force." Section 16 of Act VIII (B.C.) of 1865 speaks of *khudkasht* raiyats or resident and hereditary cultivators. In 1820 Sir Edward Colebrooke pointed it out as one of the errors of the Permanent Settlement that the peasantry had been sacrificed by one sweeping enactment which left the zemindar to make his settlement with them on such terms as he might choose to require. In the Rules for the management of Khas Mehals, dated 19th November 1850, there is the following direction:—"The claims of *khudkasht* and *kadimi raiyats* should be carefully respected. Should cultivators of this class be found holding lands at lower rates than other raiyats occupying lands of a similar description, their rents should not be raised without considering their right to continued occupation at the rent heretofore paid Some of these *raiyats*, being the descendants of those who originally broke up the land, have held at a jama now paid since twelve years previous to the Decennial Settlement. They have a lien on the soil beyond wages of labour and profits of stock. *By prescription they have a propriétary interest.*" Again, in the same rules we have the following passage:—"Should an arrear remain due at the close of the year, if the defaulter be a mere *raiyat* having no transferable interest in the soil, he may be summarily ousted, and his lands given to another."

I think the above opinions, which can be multiplied, if necessary, altogether disprove the idea that any period of residence, however short, and any occupation of land, however brief, were sufficient to create a *khudkasht* raiyat. There are innumerable passages in the Regulations, in the Minutes, and other State Papers of the early part of the present century, and in other contemporaneous documents, which couple the idea of prescription with the acquisition of the *khudkasht* right. The truth of the case then appears to be this:—Where the village community existed, any member of that community who possessed a proprietary interest in the land belonging to the village, and cultivated a portion of it, was a *khudkasht raiyat*; where the proprietorship of the land had passed from the village community to individual owners, under whom the occupants of the soil held the position of tenants, those *raiyats* who resided in and held land belonging to the village in the early days of our rule were *khudkasht raiyats*; and this is also true of raiyats belonging to villages in Bengal, where there is nothing to shew that the ownership of the village community ever existed. At the time of the Permanent Settlement there was an abundance of land and a paucity of raiyats, and, no doubt, new raiyats were readily admitted to residence in the village and occupation of land; in other words, were allowed to become *khudkasht* without much question of difficulty. As population increased and the area of the cultivated land became fully occupied, new raiyats were not so easily or readily admitted to a position which, as time passed on, became more valuable. The progress of the country and the effect of our legislation had the gradual effect of rendering the *status* of a *khudkasht* a valuable right. In all countries where the origin of rights is doubtful, prescription has come in to remove the doubt and confirm rights after the lapse of time; and thus the period of prescription, from which the right is to be inferred, has come to be regarded as the origin of the right itself. In these Provinces from analogy to the period of limitation for immoveable property, twelve years came to be regarded as the period of time sufficient or necessary to creat the *khudkasht* right. There is, however, no authority for saying that this right has, according to the custom of the country, accrued immediately upon residence in, and occupation of, land belonging to the village.

All raiyats not on a par. Different classes of raiyats and difference between old and new raiyats.

§ 135. Then, as to the second and more general allegation that all raiyats were on a par in the matter of rent rates and protection from arbitrary eviction, I think there is overwhelming evidence to show that this was not so. Lord William Bentinck in 1832 said—

"I am of opinion that throughout the country there are three descriptions of raiyats. The *first* class I consider as being to all intents and purposes proprietors of the lands which they cultivate; the *second* as having been originally tenants-at-will, but acquiring in course of time a *prescriptive right of occupancy* at fixed rates; and the *third*, as mere contract cultivators. The result of the investigation

1 B. L. R. Sup. Vol. F. B., pp. 318—320

2 Harington's Analysis.

instituted by my orders into the privileges of the different kinds of cultivators and other matters connected with the fiscal administration of the country was, as stated by the Sadr Board, that in most zemindari estates composed of single villages the raiyats are mere tenants-at-will, but that in some of the large *zemindari* estates there are hereditary raiyats in villages who seem to be connected with the land and the parties to whom they paid rent, as individuals in *pattidari* estates (where there was no superior zemindar) were with the Government, before the enactment of the British Regulations.[1] In a Resolution of Government, dated 1st August 1822, it was observed that, where the raiyats may be merely contract cultivators, holding from year to year, without any permanent obligation or tie, His Lordship in Council would not be disposed to introduce any change for the system which attaches to the land; various permanent interests independent of any contract between the parties, though it cannot without cruel injustice be destroyed, is not one desirable to establish. Entertaining this conviction, I need hardly add that I entirely differ from the proposition laid down in the note recorded by Mr. R. M. Bird on the rights of resident raiyats, namely, that all resident cultivators are entitled to have their rent fixed, without reference to the term of their residence, for I am of opinion that it should always be borne in mind that, though there may be cultivators who have proprietary right or rights of occupancy, *it does not follow that all cultivators have such rights*.....The greatest care should be taken to discriminate between the different classes .....of cultivators, and to avoid confounding the mere agricultural labourer or individual who, having settled in the village as a stranger many years ago, has ever since continued to cultivate at the discretion of zemindar with the hereditary raiyats whose ancestors perhaps first broke up the soil and paid the revenue or rent of the land direct to the servants of the State.[1]"

In one of the Rules for Settlements laid down by Lord William Bentinck's Minute of 1832, there is a direction that no new rights should be created, and all cultivators who hold as tenants-at-will should make their own bargains. At page 197 of Volume II of the Thomason Despatches, it is said that it is quite a mistake to suppose that every *asami*, who takes land in a village, should join the community on the same footing as his neighbour. Lord William Bentinck again said, in the Minute already referred to, that where no rights have attached to the cultivators, and they have been considered as tenants-at-will, neither justice nor policy requires that Government should interfere with them or their superior landlords.

If further evidence be wanting, it will be found in the cases contained in the *Appendix* to this Minute. Let me quote one. In No. 34 the Sadr Díwání Adalát said :—

"The essential characteristic of the tenure of a *khudkasht raiyat* is *the right of prescriptive occupancy*. In this case the raiyat, it has been found, has no such right, and necessarily he is simply a raiyat whose occupancy arises from the discretion of the zemindar." And again: "The will and interest of the zemindar are intended by the law to be the measure and regulator of the rent to be demanded from raiyats whose occupancy is limited and temporary."

§ 136. In paragraph 62 of the same despatch the Government of India say:— "We prefer simply to take the land as the basis of the occupancy right, and to declare that all raiyats holding or cultivating *raiyati* land shall have a right of occupancy therein. The occupancy right would then attach to all *raiyati* land without exception, that is to say, to all land that is not *khamar* or private land" The despatch, at the same time, proposes to restore the great body of the raiyats in Bengal to the position which they held under the ancient land law and custom of the country. To annex the right of occupancy to the land in whatever hands it may be would introduce a principle wholly new and altogether at variance with the common law of the country; and would most certainly not be a restoration of anything that is discoverable in its ancient institutions. As I have elsewhere fully discussed the whole question, I shall not pursue the matter further on the present occasion. I shall merely say that I entirely agree with the view which has been taken by the Secretary of State as to the propriety and policy of this proposal in the despatch of 17th August 1882. The Secretary of State there says that he is not satisfied that a measure is advisable which appeared to him to make so great and so entirely novel a departure from the ancient custom and the existing law of Bengal.

Proposal of the Government of India to annex the occupancy-right to the land itself.

This proposal rightly disapproved by the Secretary of State for India.

Principle proposed to be substituted by Secretary of State for India.

§ 137. The despatch of the Secretary of State then proceeds as follows:—

"Your proposal, in the first place, annuls the distinction, deeply rooted in the feelings and customs of the people, not only in Bengal, but in most parts of India, between the resident or permanent and the non-resident or temporary cultivator. This, when your avowed intention is to restore to the raiyats their original position and rights, appears to me anomalous and undesirable. In the next place it abandons a principle on which the statute law has been based for nearly a quarter of a century, and which was adopted in 1859 by the Legislature on rational and intelligible grounds. And, thirdly, the present papers show that the failure of the law of 1859 has arisen from an error, not in the principle itself, but in the provisions for its application. The provision that accrual of the occupancy right depends on proof, not of the raiyat's having been a cultivator for twelve years, but of his having held the same land continuously for that period, has enabled the landlord to prevent the tenant from acquiring the right, either by shifting his fields within the twelve years, by inducing him to enter into a written contract barring the right, or merely by destroying his evidence of continuous possession. This error it appears to me may be guarded against without abandoning the principle.

"I would therefore suggest for your consideration whether, in place of adopting the principle you recommend as the basis of the proposed legislation, it would not be desirable to introduce into the Bill provisions somewhat to the effect that every resident raiyat shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident raiyat shall be one who or whose ancestor has occupied any land in the village or estate for twelve years.

"You will observe that the object aimed at is that a raiyat shall be deemed to have an occupancy right in all the land which he holds in a village or estate, if he has occupied for twelve years any land

---

[1] I take the liberty of referring to the further evidence and arguments which will be found in *Landholding*, pages 525, 537—538, 555, 560, 566 and 685, 706, 725, 726—729; and as to Government having deliberately propounded and acted upon contrary views in its own *khas* mehals, pages 776 and 779.

whatever in such village or estate. It will be necessary in actual legislation to provide that this right is not forfeited by any subdivision of estates or alteration of village boundaries.

"These provisions will, you remark,[1] have practically almost as wide an effect as your own proposals. They will, at the same time, avoid the abandonment of a principle which is, with reason, strongly insisted upon by the zemindars, and to which I attach much importance."

Difference of opinion between the Government of India and the Bengal Government.

There was a difference of opinion between the Government of India and the Bengal Government as to the principle upon which the right of occupancy ought in future to be based. The Bengal Government would take the *status* of the tenant as the basis upon which the recognition of the occupancy right should be effected. The Government of India, on the other hand (see paragraph 84 of the despatch of 21st March 1882), desired to take a classification of the lands as the basis of recognition, and would make that recognition general in order that it might be perfectly secure. Between these conflicting views the Secretary of State inclined to accept the *status* of the tenant as the proper basis of recognition.

Proposal of the Secretary of State to make the status of the raiyat the basis of recognition of the occupancy right sound in principle.

§ 138. To this view I beg to express my assent. I entertain no doubt that, as a general principle, the *status* of the raiyat is the proper basis of recognition of the occupancy right. I think that the whole of the past history of the country, as well as the peculiar features which characterize the social life of the inhabitants of these provinces, altogether support the idea of personal *status*. The Secretary of State, however, while accepting the principle of personal *status*, suggests a provision that every resident raiyat shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident raiyat shall be one who or whose ancestor has occupied any land in a village or estate for twelve years. The exact meaning of this language is not altogether clear. Is it intended that the resident raiyat, as here defined, shall have a right of occupancy in the land which he occupies and pays rent for at the time when the Bill becomes law, or is it the intention that he shall have a right of occupancy in all land which, at any time after the Bill becomes law, shall come into his possession, the effect of the latter intention being to give him a right of occupancy in any additional land which he may acquire by renting it, by inheritance, by gift, or by purchase. If the latter intention is contemplated I think that what is proposed is not in accordance with the common law or custom of the country, under which, both before and since the Permanent Settlement, the zemindars have always enjoyed the right of letting land not in the occupation of the protected classes of raiyats, in any manner which they considered best for their own interest. At the same time, in order to avoid the mischief of the existence of which in Behar there is some evidence, it might be reasonable to allow the raiyats in that province a right of occupancy in a quantity of land equal to the average quantity held by them during the previous twelve years, the condition of continuing to hold the *same land* being dispensed with in their case as a reasonable remedy for the mischief which is said to have existed in that part of the country.

The intended application of this principle not quite clear.

Let Behar raiyats have a right of occupancy in a quantity of land equal to their average holding of the previous twelve years.

Proposal to limit the right of occupancy to a holding of sufficient size to maintain an average family in average comfort.

§ 139.—There is a further suggestion which may be made, and that is, to limit the quantity of land in which a right of occupancy can be acquired to a holding of sufficient size to maintain an average family in average comfort. I press it for consideration whether this latter suggestion does not, for all parts of the country, confer all that may be reasonably demanded in the interest of the cultivator of the soil. I cannot see, and I have never heard any argument advanced to prove, how the community at large can be benefited by allowing a raiyat to acquire a quasi-proprietary right in land which he cannot himself cultivate, and which he must necessarily sublet. I entertain a strong opinion that the substitution of petty landlords of this class for the larger landlords who now exist can do no possible good, and will, in all probability, do much harm. If the acquisition of a right of occupancy by prescription were limited to holdings of a sufficient size to maintain an average family in comfort, the zemindars should be allowed to grant, on such terms as might be agreed upon, the same rights in similar holdings. The agricultural class would thus be incited to thrift in order to obtain this right. This incitement will be wanting if a quasi-proprietary interest is given without labour or exertion, or provident care being devoted to its acquisition.

Zemindars should be allowed to grant occupancy right in similar holdings.

Principle sanctioned by Secretary of State neutralized by other provisions of Bill.

§ 140. Then it appears to me that the principle propounded by the Secretary of State has been altogether neutralized by the other provisions which have been inserted in the Bill. I refer to the presumption in section 26 (2), that when it is proved or admitted that a person holds land as a raiyat, it shall, as between him and his landlord, be presumed that he has for twelve years held the land or some part of it as a raiyat. The provisions of section 27 defining a village or estate will also, as I have already pointed out, be productive of most serious consequences. Then the provisions of the Bill altogether ignore the idea of residence, and I can scarcely think that this was intended by the Secretary of State.

---

[1] Paragraph 107.

§ 141. In considering the zemindar's rights, the despatch of the Government of India contains the following passage:—"Practically, they did enhance the rents, though they had no legal claim to raise them with any direct reference to the increasing value of the produce." Upon this proposition thus introduced without comment, and without proof, an important train of reasoning and an ultimate conclusion of serious consequence depend. Now, here again I venture to question the accuracy of the proposition which forms the major premise of the whole of the subsequent reasoning. I have shown, upon evidence which I think it is impossible to controvert, that the zemindars have legally exercised the right of enhancement ever since the time of the Permanent Settlement; and that the right to enhance, with reference to the increase in the value of the produce was not, as it is termed in paragraph 105 of the despatch, a novel right which they never had before 1859, but was recognized as belonging to them, and was claimed and exercised by Government itself in its capacity of zemindar (see *Landholding*, pages 533 to 556). Let any unprejudiced individual read the evidence and form his own conclusion. In addition to that evidence, further proof will be found in the cases contained in the *Appendix* to this Minute. In case No. 13, the Sadr Díwání Adálat spoke of the zemindar as being entitled to demand an increase of rent in proportion to the *ascertained assets*: and the ascertained assets necessarily included the value of the produce. In case No. 20, we have enhancement at the improved pargana rate, the increase being 166 per cent., and the Sadr Díwání Adálat spoke of the local rent of land *progressively increasing*. Abundant evidence to the same effect will be found in the other cases and in the old reports. Upon a fair review of the whole evidence, there can be no reasonable doubt that the right to enhance rents on the ground of the increase of the value of produce, or in other words, on the ground of increase in prices, has been admitted to exist in, and has been exercised by, the zemindars from the time of the Permanent Settlement down to 1859 and to the present day. It may be observed that the application by the Government itself[1] of the principle of rent taught by English Political Economists, into which the element of price of produce necessarily enters, supplies a strong argument to show that the Government itself considered that rise of price was a legal ground of enhancement.

Assumption that zemindars had no legal right to enhance on ground of increased value of produce not based on fact.

§ 142. The enhancement provisions of the Bill will leave the zemindars very little chance of increasing the annuities which will in future be derived from their estates. As I have already said, the possible advantages to be derived from successful enhancement litigation will in few (if any) instances afford a sufficient return for the expense that will have to be incurred, and enhancement without expensive litigation will be improbable, regard being had to those provisions of the Bill which almost force the parties into Court for the settlement of all questions which may arise as to the payment of higher rent. I am of opinion that the limit of enhancement, contained in the Commission Bill, namely, that the new rent shall not be more than double the old rent, taken with the provision as to progressive increase where a sudden raising of rent would involve hardship, was fair to both parties. Looking at the matter from the zemindar's point of view, we must remember that in many parts of Bengal the raiyats have successfully resisted even reasonable enhancement, and have for many years been appropriating the whole of the increased profit, a portion of which even the principle of the present Bill admits to have justly belonged to the zemindars. The combined effect of the enhancement provisions of the Bill, and those other provisions which facilitate the rapid acquisition of a right of occupancy in the remaining lands, will be that the zemindars will be converted into mere annuitants, and cannot be expected to take any interest in the management of their estates, while the real beneficial ownership will be transferred to middlemen who will have a direct interest in raising rents, inasmuch as the provisions of the Bill will have no practical effect in preventing the enjoyment by them of the whole of the increase.

Successful litigation, without which enhancement will not be possible, will not afford a sufficient return for the expense incurred.

Effect of the Bill will be to convert the zemindars into mere annuitants, and take away all their interest in the management of their estates.

§ 143. One of the professed objects of the Bill is to create peasant-proprietors. This object postulates that the agricultural class in these provinces possess habits and feelings which will ensure the success of this system. Whether this can be safely postulated or not is an exceedingly doubtful question. Mr. Longfield entertained a strong idea that peasant-proprietorship could never flourish in Ireland. Mr. Sackville West, in his report on the tenure of land in France, expressed his opinion that the Irish and French systems were originally almost identical, and that, in consequence of the peculiar proclivities of the people, what caused in the one country discontent and agrarian outrage, has in the other country been productive of social order and general contentment. At page 158 of the Parliamentary Blue Book on Land Tenures, it is observed that it would be erroneous to suppose that a system of husbandry, such as exists in Belgium, could be applied with advantage to other countries indiscriminately; that in order to meet with success, it must have been developed naturally by the force of circumstances and events, and must, moreover, be in harmony with the customs and institutions of the inhabitants, and adapted

Bill will not effectuate intention of creating peasant-proprietors.

[1] See *Landholding*, page 555, where Government made an exception in favour of the *khudkasht* and *kadimi raiyats* allowing them something beyond *wages of labour and profits of stock*; and pages 675-676, where Lord William Bentinck in 1832 spoke of *the increased rent which would have accrued naturally from increased produce, enhanced price, and the reclaiming of waste lands*.

to the climate and general capabilities of the soil. It has been repeatedly said that the great danger of peasant-proprietorship in Ireland is that the peasant, as soon as he found himself a proprietor, would prefer the *role* of proprietor to that of peasant-cultivator and would sub-let his land, thus introducing again the worst evils of the cottier system. Let any one who has had experience of the great agricultural community in these provinces give his candid opinion as to whether this danger is not especially to be apprehended in this country, in which the great ambition of every child of the soil is to have some one subordinate to him: some one over whom he may be *malik* or superior.

Sub-division and sub-letting, permitted by the Bill, fatal to any hope of successful peasant-proprietorship.

§ 144. But even supposing for argument's sake that the raiyat possesses every single qualification which is necessary to ensure the success of peasant-proprietorship, there are two principles inherent in the law and custom of this country, and permitted by the Bill, which must prove fatal to the hope of this success. I refer to *sub-division* and *sub-letting*. Sub-division is a necessary result of the law of inheritance both of the Hindus and of the Muhammadans, under which every child is entitled to a share of his father's holding; and although the landlord cannot be compelled to apportion the rent, the sharers, as between themselves, have a legal right to a partition of the land itself. Then *sub-letting* is sanctioned by the express terms of the Bill, which, in my opinion, contains no provisions that will have any practical effect in discouraging or stopping the practice. The provisions of section 62, which restrict the landlord of an under-raiyat from recovering anything in excess of 25 per cent. or, in case of registered lease, 50 per cent. more rent than he himself pays, will be nugatory in practice. Either a *salami* or foregift will be taken in advance, or the under-raiyat, whom it is designed to protect, will, for obvious reasons, not avail himself of the protection offered him. In the case of numerous gradations or degrees of sub-letting, such as exist in the Backergunge district, the provision will be impossible of application.

Bill will do mischief by increasing the class of middlemen.

§ 145. Then, the Bill, instead of suppressing, creates middlemen Every raiyat, who has more land than he can himself cultivate, will become a middleman. The *patni* system, the registration of tenures under Act XI of 1859, and the direct encouragement given by Government to the creation of intermediate tenures have already had a most mischievous operation in creating middlemen in these provinces. But the mischief which has hitherto ensued will be nothing to what will follow if this Bill becomes law. The creation of large taluks possesses a certain advantage in breaking up property into estates of convenient size for good management; and so long as sub-infeudation proceeds no further than this, no great evil is caused. But when petty middlemen come into existence—men who can only make their occupation profitable by exacting from their tenants all that remains above the poorest and barest sustenance—the system becomes fatal to the best interests of the agricultural community. In order to illustrate this observation, I may refer to the *gabelloto* system in Sicily (see *Landholding*, page 138), the cottier system in Ireland (*ditto*, pages 269-270), and the system of *ejarah* and *dar-ejarah* in Behar (*ditto*, pages 616 to 620). The middlemen who will be created by the Bill will be of that petty class which the experience of other countries has proved to be most baneful. I entirely concur in the following remarks of the late Babu Kristodas Pal in his recorded dissent from the Bill:—"The middleman of course gains much more than what he has under the existing law, but the *bonâ fide* cultivator, in whose behalf the greatest anxiety was evinced in the Committee, will, I fear, be practically worse off than he is at present."

Provisions of the Bill not sufficiently modulated to suit the different requirements of different parts of the country.

§ 146. I think the Bill partakes too much of the nature of the "Chancellor's shoe," and that sufficient account is not taken of the great difference between different parts of the large territory to which its provisions are intended to apply. More especially, I fear that the Bengal provinces will in many things be sacrificed to the feeling of sympathy that has been created for the raiyats of Behar. The Devon Commission wisely observed, when speaking of Ireland, that substantial and permanent relief could only be hoped for from a combination of measures adapting themselves to the varying circumstances under which the owners and occupiers of land are placed in different parts of the country. And the Duke of Richmond's Commission, quoting this observation with approval, added that the very nature of the soil and the geographical attributes of the country vary so much that remedies, which would serve in one locality, might be inapplicable or of little value elsewhere. This latter remark is especially true when applied to Behar and Bengal.

The Bill is hard towards the zemindars.

§ 147. I think the Bill is hard upon the zemindars, more especially upon the Bengal zemindars. Every point of conflict between their interests and those of the raiyats is ruled against them and in favour of their tenants. They are now declared to have the smaller share in the proprietary right in all their lands—as well in the lands which were in the occupation of raiyats at the time of the Permanent Settlement, as in those lands which were then waste, but have since been reclaimed and brought under cultivation. Lord Hastings in 1822 said that the whole foundation of our Bengal Revenue Code rested on the recognition of private property in the soil; and that it might be assumed that the sadr malguzar, if admitted to engage as proprietor, was intended to be vested, subject to the payment of Government revenue, with the *absolute property of all land in which no other individual possessed a fixed and permanent interest*; that lands occupied by contract cultivators, accounting for their rents immediately to the sadr malguzar, were thus to be regarded as his full

property subject to the stipulations of the contract, and that it was doubtless intended to recognize the full property of the zemindars in unclaimed waste land lying within the limits of their estates. Lord Cornwallis in 1793 observed that the waste lands far exceeded what sufficed for pasturing cattle, but that it was the expectation of bringing them under cultivation and of reaping the profit of them that had induced many zemindars to agree to the revenue then assessed upon their lands. And it will be borne in mind that Lord Cornwallis elsewhere declared the reclamation of waste land to be a legitimate means of increasing the zemindar's profits, in a passage which has been often quoted :—"The rents of an estate can only be raised by inducing the raiyats to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste land which are to be found in almost every zemindari in Bengal." When we remember that many of the present zemindars are purchasers for valuable consideration at revenue sales, it becomes a matter of grave consideration whether the right of letting the remaining lands in any manner they pleased expressly conferred at the time of the Permanent Settlement and exercised ever since, can now be taken away without compensating those whose interests must suffer. It has been said that one of the objects of the present Bill is to restore the ancient law and custom of the country. How is it possible to contend that the ancient law of the country, which conferred upon the zemindars the absolute proprietorship of lands that were waste at the time of the Permanent Settlement, is restored by now making over the larger share of the proprietary interest in those lands to their tenants who have since been let into possession ?

Full proprietary right of the zemindars in land waste at the time of the "Permanent Settlement."

§ 148. By the Bill which I prepared for the Commission, it was proposed to codify the whole law of landlord and tenant in these provinces. This part of the project has been abandoned in the present Bill, and the reasons given for abandoning it will be found in paragraph 10 of the *Statement of Objects and Reasons.* I regret exceedingly the decision which has been arrived at on this point. It appears to me that, if there is any portion of the law of India, the codification of which is eminently desirable and urgent, it is the law of landlord and tenant within the provinces subject to the Lieutenant-Governor of Bengal. That law affects the great majority of the community, the large mass of the population being agriculturists. Cases governed by that law form the largest class of suits which come before the Courts. Complaints have been made of late years that Codes have been prepared which the country does not require, and will not require for many years to come. But a Code of the law of landlord and tenant is required, and has been required for many years It is of the very first importance that the people should be able to learn and know their rights as affected or settled by this law. The knowledge of these rights would do much to prevent disputes, which are more frequent and more prone to arise when men are mutually ignorant of what they can properly claim and legally enforce. In the despatch of the Government of India of the 10th May 1877, the following remarks were made with reference to the subject of codification in India :—

Design of codifying the whole law of landlord and tenant abandoned in the present Bill.

"We feel, on the contrary, that the reduction, to a clear, compact, and scientific form of the branches of our Substantive Law which are still uncodified would be a work of the utmost utility, not only to the Judges and the legal profession, but also to the people and the Government. It would save labour and thus facilitate the despatch of business and cheapen the cost of litigation : it would tend to keep our untrained Judges from error : it would settle disputed questions on which our Superior Courts are unable to agree : it would (as your Lordship has observed in the despatch under reply) preclude the introduction of technicalities and doctrines unsuited to this country: it would, perhaps, enable us to make some urgently-needed social reforms without the risk of exciting popular opposition ; and it would assuredly diffuse among the people of India a more accurate knowledge of their rights and duties than they will ever attain if their law is left in its present state, that is to say, partially codified, but the bulk ascertainable only from English text-books written solely with reference to the system of English law, and from a crowd of decisions, often obscure and sometimes contradictory, to be found in the English and Indian Law Reports. . . . . We should of course be influenced more by the actual wants of the country than by any lovefor logical arrangement, legal symmetry, or scientific completeness."

§ 149. It appears to me that if these principles are to be adhered to, if due regard is to be paid to the actual wants of the country, there is no more pressing subject for codification than the law of Landlord and Tenant in the provinces which constitute the Bengal Lieutenant-Governorship. Personally, I see no difficulty in carrying on the work of codification along with the consideration of important substantive amendments of particular portions of the existing law. I think the policy and propriety of these amendments will be more fully apprehended, and more correctly estimated by those who have to consider them, if they have first obtained that complete acquaintance with the whole subject which is or ought to be indispensable to undertaking the task of codification. Then, again, the work of codification, if entered upon at some future time, will cause a re-opening of cardinal questions, a fresh unsettling of ideas, and a fresh disturbance of rights, which cannot fail to bring about pernicious consequences. Amongst the subjects included in the Commission Bill and omitted from the Bill now before the Legislature are the following :—the use of land, not forming part of an agricultural holding, for building purposes ; the principle of merger ; apportionment of rent ; the right of co-sharers to sue for and recover sparate shares of the rent ; the right of co-sharers to measure or enhance ; the duty of a landlord to put his tenant in possession ; the incompetency of any person to grant a lease for a term exceeding his own interest ; and the provisions of the previous law as to suits against an agent for money, or accounts, or papers All those

Impolicy of re-opening the whole question by future codification.

portions of the law are called into daily operation throughout the country; but although their principles have been generally well settled by judicial decision, the errors committed by the parties themselves, and occasionally by the inferior courts, show that the law as settled is not known or understood by the community. If codification is the true remedy for mischiefs that arise from want of knowledge of the law, surely that remedy ought to be applied here.

§ 150. One of the questions upon which the Judges of the High Court are asked their opinion is—what modifications is it desirable to make, whether by rules or otherwise, in the Code of Civil Procedure, with a view to expedite the trial of rent-suits? It is further enquired whether it is desirable that landlords should be empowered to institute, by means of a single plaint, suits for arrears against a number of raiyats holding independently of each other. Upon this point, after five years' further experience, I adhere to what is said in paragraph 174 of the Report of the Rent Law Commission, which embodies the views then entertained by me and accepted by my colleagues without dissent. It is there said that any attempt to bridge judicial enquiry by arbitrary and abnormal presumptions in favour of either party which, by precluding the production of evidence, may enable Judges to arrive at rapid conclusions, is retrogressive and unsafe: that in order that justice may be done, truth must be elucidated, and the elucidation of truth, especially in this country, requires time and patience; and there is, in consequence, extreme danger in summary methods of proceeding. It was further pointed out that the history of the judicial administration of this country for the last half century has been a continuous record of the abandonment of a system of procedure under which rights were hastily and perfunctorily adjudicated upon the person defeated and dissatisfied being forced to resort to a regular suit in order to find a remedy for the wrong caused by an irregular proceeding; and with this result that he was too often saddled with the burden of proof which should have been laid upon his opponent, his chance of ultimate success being thus unfairly diminished.

Can the trial of rent-suits be expedited by modifications of the existing procedure?

§ 151. I think that increased facility should be afforded to landlords for the realization of their rents, more especially when those rents are contumaciously withheld. But I believe that this facility can be afforded, not by any abbreviated form of procedure, but by supplying a sufficient staff of judicial officers, who may, with all possible despatch, hear and dispose of the cases brought into Court. I think zemindars have a right to ask for this facility, more especially as the court-fee stamp upon rent-suits has been quadrupled since 1869. Before that year rent-suits were tried in the revenue courts, and the institution-fee for these suits was one-fourth of the fee required for suits instituted in the ordinary Civil Courts. If the court-fee is retained at its present high rate, there ought to be a staff of judicial officers capable of disposing of every rent-suit within a month of its institution; and an appeal, when preferred, ought not to take more than another month for its disposal. This would be quite possible with the Small Cause Court Procedure contained in the Commission Bill, if the judicial agency were made sufficiently strong. Then as to the question of court fees. When the whole of the raiyats on an estate conspire together to refuse payment of their rents, even at the old rate, a large amount of capital is necessary in order to enable the landlord to bring suits against them all individually, and when decrees have been passed, to obtain satisfaction by successful execution. I think that the court-fee upon the institution of rent-suits generally ought to be reduced, or that the Local Government should have power to direct a special exemption in the case of landlords forced to sue their tenants *en masse*.

Increased facility for realisation of rent should be afforded to landlords. How it is possible to effect this.

§ 152. As to the question of including a number of raiyats, holding independently of each other, in a single case, I have expressed my opinion on several occasions. I do not see how this course is possible as regards suits for arrears of rent. The extent of land held or denied to be held; the rent or the rate of rent; the amount payable, and the amount paid or alleged to have been paid, differ as regards each individual raiyat. There is therefore no question common to all the defendants which can be tried in a case of this nature, and to join a large number of raiyats as defendants in a single case would only lead to confusion, which would retard, instead of accelerating, the decision of their cases. Where the main question at issue is common to a large number of raiyats, for example, where the question is one of enhancement on the ground that the rents previously paid are below the prevailing rate, or on the ground of increase in price, I think that provision may well be made for including a number of raiyats as co-defendants in a single case, and I have elsewhere shown that this practice is not unknown in the Court of Chancery in England. As to the question whether any provision can safely be enacted restricting the right to claim a re-trial when a decree has been given *ex parte*, I entirely concur in the answer which has already been given by the Judges in the Registrar's letter No. 1986 of the 8th August last. I am also of opinion that it would be exceedingly dangerous to enact that a tenant in a suit for arrears should not be allowed to appeal from a decree passed against him except on depositing the amount of the decree.

Feasibility of joining a number of raiyats as co-defendants in a single case.

Proposed restrictions on right to claim a new trial when decree made *ex parte* and on right of appeal.

§ 153. I may here conveniently deal with certain points which are proposed for consideration in letter No. 784 of the 5th of May last, from the Secretary to the Government of India, Legislative Department, to the Secretary to the Government of Bengal.

Should revenue officers be empowered to make irrigation channels.

It is asked whether, with reference especially to landlords' improvements, it is desirable to empower revenue officers to arrange for the cutting of irrigation channels, the distribution of water, and the payment of compensation. In Behar such powers might perhaps be conferred upon revenue officers with advantage; and, if under the provisions of the new Bill zemindars are inclined to invest their money in improvements of this kind, I think it imperatively necessary that a reasonable interest on their outlay should be secured to them under the authority of Government.

Application of summary sale procedure to taluks paying revenue to Government through zemindars.

§ 154. As to the question whether the summary sale procedure can be applied to those dependent taluks, the revenue of which was settled direct with Government, though the holders pay it through the zemindar who is responsible for its realization, I think the question possesses no real importance, having regard to the number of cases which it affects, or is likely to affect. In the whole course of my experience, I have had only one case concerned with a taluk of this class. The amount of revenue is generally so small, as compared with the profits, that, except under the most abnormal circumstances, the property is not likely to be jeopardized by withholding the revenue payable thereupon. As to whether the same procedure should be applied to the recovery of arrears of Road Cess and Public Works Cess from rent-free tenure-holders, I think that it should not. I apprehend that it would open a door to fraudulent attempts to destroy these tenures.

And to the recovery of road cess, &c., from the holders of lakhiraj tenures.

Bastu land not forming part of a holding.

Utbandi, hal-hasili, and similar lands.

§ 155. As to whether provisions are required in the Bill with respect to tenants of homestead or *bastu* land which does not form part of an occupancy holding, I still entertain the opinion which I expressed when a member of the Rent Commission—that this is a proper subject for legislation. I have since met many instances of hardships resulting from the want of equitable provisions upon this subject I think the provisions of the Bill as to *utbandi* and *hal-hasili* lands should be extended to lands held upon similar conditions, and this can be done by an *ejusdem generis* clause without any specification, which it might be inexpedient to attempt. A similar clause may be used for the purpose of exempting from pre-emption transferable occupancy rights such as those in *gusashta* and *gora* holdings.

Price lists.

General limit for money-rents properly omitted from the Bill.

§ 156. With reference to the price lists which have been published within the last twelve years, I have already expressed my opinion. I think that any attempt to rectify them now would be futile. I entirely approve of the omission from the Bill of the section which limited money-rents to a maximum of one-fifth of the gross produce. Any such provision could be just only where the Legislature had a clean sheet of paper to write upon. In a country in which inequalities have come into existence as the natural consequence of different circumstances and different rates of progress in different parts of the country, the introduction of a uniform rule of this kind would have most mischievous effects. In some parts of the country rents would have to be lowered to the new standard, whilst elsewhere enhancement, beyond the natural outcome of gradual prosperity, would be attempted, and the result would be a vast mass of injurious litigation.

My personal views as to the course which legislation ought to take.

§ 157. In conclusion, I still adhere, after five years' further experience, to the views which I entertained and expressed, when I was a member of the Rent Commission, as to the safe and prudent lines of legislation. I think we ought not to interfere with existing rights which have been the creation of our own administration operating upon the natural progress of the country. I think that no case has been made out for disturbing the land-marks of property. It must be borne in mind, as I have more than once pointed out, that a large proportion of the present proprietors are *bonâ fide* purchasers for valuable consideration—men who have paid their money for property sold at revenue sales and in execution of the decrees of the Civil Courts upon the faith of existing state of things, and the rights created by our laws and by our own action or inaction. I am quite prepared to admit, as I have already admitted, that, if it is necessary in the interests of the whole community that existing rights, even though acquired in the manner just stated, should be interfered with, the Legislature has full power to interfere, and such interference may be the imperative duty of an enlightened Government. But before such interference can be justified, a strong case for its expediency or necessity must be made out, and I am of opinion that such a case has not been established in the present instance. In my view, legislation ought to accept as its proper basis the existing state of things, and, whilst putting down oppression and injustice with a strong hand, should respect those rights which we ourselves have created in landed property in these provinces I quite assent to what was said by Sir Ashley Eden that he would like to see the Bengal raiyats as a class secure in the enjoyment of those rights which they held under the ancient land law and custom of the country. This is, I think, a safe and sound basis for legislation; but I feel constrained to express a strong opinion that the Bill in its present form covers much wider ground, and will in consequence be fraught with exceeding mischief. It alters in very essential particulars the rights of all persons having any interest in land; and the readjustment of those rights upon the basis of the Bill will be affected only after an enormous amount of litigation extending over many years of the future. The Bill is exceedingly complicated in its details, and here again we find the elements of litigation; and, in consequence of the parties concerned being debarred from settling by mutual agreement many of the questions

which are sure to arise between them, they will be forced into Court, inasmuch as no other mod· of settling their differences is left open to them. In expressing those opinions which have been suggested by practical knowledge of the subject and matured by experience and some study of other systems, I am *nullius addictus jurare in verba magistri*. I entertain a strong feeling that the whole question should be dealt with upon its own merits, in the light of the past social history, and with a single view to the future welfare of the millions whose interests are concerned, and I deprecate any legislation conducted in the spirit of English party politics, or upon the basis of an economy which has no existence in India.

C. D. FIELD.

CALCUTTA,
The 11th September 1884.

APPENDIX.

CASES IN THE ZILLAH COURTS.

1. In *Radha Charan Das, &c.*, v. *Bungshi Mohun Sirkar* (decided by the Judge of Rungpore on the 26th June 1846) certain *paikasth raiyats* had instituted a suit against their under-tenants in order to obtain an increase of rent after issue of the notification prescribed by section 9 of Regulation V of 1812. It was held that the plaintiff's were not competent to exercise the right of landlords in issuing a notice under that section.

2. The case of *Nand Kissore Das* v. *Busch and Bonnevie* (decided by the Judge of Rungpore on the 5th December 1846) was a suit by farmers for *enhanced rent founded on a measurement* and *jamabandi*.

3. The case of *Furruck Mahomed Sirkar* v. *Busch and Bonnevie* (decided by the Judge of Rungpore on the 11th December 1846) was a suit by certain *kutkinadars* for the recovery of enhanced rent *assessed on measurement*. The defendant objected that he was a *kudkasht raiyat* not liable to increased rent, and that the rates of assessment and the length of the measuring rod were not given in the plaint. The case was remanded for a re-trial.

4. *Sheodyal Rai* v. *Mussamat Rajbungshi Koer, &c.*, decided by the Judge of Sarun on the 28th May 1846, the plantiffs sued for alleged arrears of rent. It was held that their claim was clearly an attempt on the part of farmers to enhance the rents of the tenantry by the imposition of illegal cesses, and that farmers had no power to enhance rents in excess of previous existing engagements *without a general measurement* or except upon proof or collusion.

5. *Jaijeet Sing* v *Nasib Mahto* (decided by the Judge of Sarun on the 30th July 1846) was a suit by a farmer for enhanced rent after "notices to the tenantry to come forward and engage for their lands." These notices were a "general call," which was held insufficient. It was observed that zemindars and farmers in prosecuting for enhanced rent must show that the amount demanded in the notification is conformable to the pargana rates; and the provisions of section 7, Regulation IV of 1794, and sections 7, 9, and 10 of Regulation V of 1812 were referred to.

6. In *Jaijeet Sing* v. *Bahadur Bhuggut* (decided by the Judge of Sarun on 30th July 1846) it was held that plaintiff had failed to prove his legal right to enhanced rent either by the defendant's *voluntary contract*, or by a comparison with the *established pargana* rates.

7. *Dena* v. *Lallit Ram* (decided by the Judge of Sarun on the 11th December 1846) was a suit to reverse a summary award for rent. The Judge said :—"No written engagements exist, therefore defendant was bound to conform to the rules of Regulation V of 1812, both in assessing and demanding payment of his rent. This he has failed to do. No formal notice was served at the season of cultivation, notifying the specific rent to be paid by the tenant for the ensuing year: nor is it shown that the amount demanded was conformable to the pargana rates."

8. *Dindiyal Singh, &c.*, v. *Rujha Misser* (decided by the Judge of Shahabad on the 26th October 1846) was a suit for rent. Both parties disputed the rate. The Judge said :—"Neither parties have any documentary nor oral evidence to prove what is the actual rate per bigha on which this cultivation is held; and the only course left for the Munsif to pursue was to ascertain the rates paid for lands in the surrounding villages, and then strike and apply an average."

9. In *Bakir Ali, &c.*, v. *Shuffee Alnissa, &c.* (decided by the Judge of Chittagong on the 1st July 1847), plaintiffs sued to enhance the *rent of a taluk*. A rent of Rs. 72 odd had been assessed upon 4 droons odd at the time of the Decennial Settlement; and the question was whether the plaintiffs were entitled to additional rent for some 12 kanees of land found by measurement in excess of the 4 droons upon which the rent of Rs. 72 was originally assessed. It was held that as these surplus lands had never been assessed, the defendant was liable to pay rent for them.

10. In *Mahomed Ruffic* v. *Golam Hossein* (decided by the Judge of Chittagong on the 6th July 1847) defendant set up, but failed to prove, a fixed jama of Rs. 11-11; and it was held that he was liable to pay rent for 9 kanees odd at the local rate of Re. 1-12 per kanee; that he must enter into an engagement to pay rent at that rate within a month or give up the land.

11. In *Stewart, &c.*, v. *Raj Mohan Rai* (decided by the Judge of Dacca on the 20th April 1847) the Appellate Court directed the *pargana rate of rent* to be ascertained by a local amin, and it was ascertained accordingly.

12. In *Jai Narain Mitter* v. *Azimudin Khalasi* (decided by the Judge of Jessore) the Munsif dismissed a suit for rent because the defendant had sold the land. The Judge held that since the landlord had not sanctioned the sale, and the land in the *jote* of a cultivating *raiyat* is not transferable by sale according to construction No. 702 of the 6th July 1852, the *raiyat* must be answerable for the usual rent until he may give up the land to the landlord.

N. B.—Many of the reported enhancement cases proceed on the ground of more land being discovered by measurement to be under cultivation. The rates seem to have been taken as discoverable in the neighbourhood, and an amin was usually sent to discover them.

CASES IN THE SADAR DIWANI ADALAT.

13. In *Banchanand* v. *Hargopal Bhaduri, &c.* (1 S. D. A. Rep. 145) the Sadr Diwání Adálat in 1806 (present J. H. Harrington and J. Fombelle) "entertained no doubt of the lands being held by the respondent at a variable rent, or of their being of that description of tenures on which the zemindar is entitled to demand an *increase of rent in proportion to the ascertained assets*; and as there did not appear to be in the pargana any settled rates of rent for similar tenures according to which the proper rent could be adjusted, it was determined that *the rent* demandable from the respondents *should be settled by an actual survey and*

measurement to be made at the expense of the appellant, unless the parties should come to an adjustment between themselves. In the event of no adjustment being made by them, it was directed that the zillah Judge should cause a *measurement of the lands and estimate of their produce* to be taken, and after deducting from the produce ten per cent. as the customary profit of the talukdars, together with the actual charges of collection, should fix the residue as the annual rent demandable by the appellant for future years."

14. In *Hari Mohun Thakur* v. *Ramnarain Deo* (1 S. D. A. Rep. 255) "the plaintiffs stated (in 1808) "that *according to the actual survey and measurement*, the rent payable on the lands tenanted by the defendant for the year 1811, at the rate of similar tenures in the pargana, was 1,326 rupees."

15. In *Gopi Mohun Thakur* v. *Radha Mohun Ghose* (2 S. D. A. Rep. 17) the plaintiffs sued in 1805 to obtain a measurement and allotment of the rent of a certain mouzah which was held as a dependent taluk. The Provincial Courts were of opinion that the rent of dependent talukdars ought not to be ascertained by the pargana rates, which were applicable to common tenants; but that under the spirit of section 10, Regulation I of 1793, it was to be estimated by adding to the proportionate amount of public revenue assessable on the mehal held by the talukdar a ten per cent. allowance as the *malikanah* of the zemindar. The Sadr Díwáni Adálat in 1812 reversed this decision, observing that the principle here laid down was applicable only to independent proprietors of estates; and referring to the previous case of *Banchanand* v. *Hargopal*, followed the rule there prescribed by which the rent demandable from a dependent talukdar was directed to be fixed on a *measurement of the lands and estimate of their produce* by deducting from the produce ten per cent. as the profit of the talukdars, together with the actual charges of collection, the residue to form the rent demandable by the zemindar. Section 8 of Regulation V of 1812 was referred to as containing the same rule.

16. In *Gopi Mohun Thakur* v. *Ram Tanu Bose* (2 S. D. A. 19) the Sadr Díwáni Adálat directed that the respondent's "jama should be adjusted on a *measurement* and adjustment in conformity with the principle laid down in section 8 of Regulation V of 1812."

17. In *Ramkanth Dutt* v. *Radhakanth Dutt* (2 S. D. A. 55) the plaintiffs sued to recover possession of a taluk, alleging that the zemindar had attached it, and sent a *Sazawal to measure and re-assess it*; that the *Sazawal* made the mufasil collections (*i.e.*, the collections of rent from the cultivators) in 1210 B. S; and in the following year offer them a lease at an enhanced rent; that they refused this lease, considering the demand excessive, and were in consequence ejected. They admitted that the defendant had the right of annual readjustment of the rent at the pargana rate, but objected to the amount demanded and the *data* on which it was calculated. Defendant maintained that this amount had been fixed after a survey and careful ascertainment of what was usual in the pargana. The Zillah Judge had sent an amin to *re-measure* the whole land, as well as to examine the mufasil papers, and what evidence he could procure on the spot with a view to ascertain the *nirikh* of rate per *kanee* current in the pargana. The Sadr Díwáni Adálat adopted the rates of a previous settlement, which had been acknowledged "agreeably to the statement of the Collector" by the plaintiffs and had been paid for four years.

18. In *Khaja Aratoon* v. *Durga Pershad Bhattacharjya* (3 S. D A. 34) the plaintiffs sued for Rs. 2,682 rent in respect of lands which they had recovered by a decree of the Sadr Díwáni Adálat from the zemindars of Sundeep. They alleged that these zemindars, while in possession, had, for the purpose of defrauding them, let out lands at a low rent, and that at the settlement of the pargana the farmers, colluding with the *zemindars' gomashtahs* and with the *amins*, had caused them to make an improper *measurement* and *assessment*, and had so acquired lands at low rents. They further alleged that on discovering this, they issued notices to the tenants to appear and pay rents according to the rules and measurement of the pargana, but the defendants did not appear. The defendants set up a *mukurrari jangalburi* lease granted by the zemindars of Sundeep, and pleaded that the plaintiffs had no right to enhance the rent paid by them for 23 years and assessed before the Decennial Settlement, or to *measure* the land which had already been formerly subjected to *measurement*. The Sadar Díwáni Adálat decided that, although the meaning of the patta was not clear, yet regard being had to section 8 of Regulation VIII of 1793, the defendants ought to have paid an increase of rent in proportion to the quantity of land brought into cultivation; and if at the time of measurement they passed any land for which rent had not been paid for 23 years, they ought to have paid the rent of such lands to the plaintiffs according to the pargana rates.

19. In *Fiazudin* v. *Rai Chundra Rai* (5 S. D. A. 46) the plaintiff sued in 1820 to enhance the rent of a tenure. The defendants pleaded, but failed to prove, a *mukurrari* holding. The defendants were declared liable to pay rent on their tenure at the rate of the pargana, and the Judge was directed to *settle the amount* with reference to the local enquiry already made, or the result of a *fresh investigation and measurement*, which he was authorized to make.

20. In *Mussammat Deb Rani* v. *Ram Narain Nag* (5 S. D. A. 102) the plaintiff sued in 1819 to assess "at the improved pergana rate" certain lands which formed part of a *patni* tenure which he had purchased. He alleged that according to survey the proper pargana rent on these lands was Rs. 367-8. A *measurement* was made by an Amin and afterwards by a Munsif, both of whom reported the quantity of land to be 197 bighas 2 biswas, *liable by the pergana rates* to the rent of Rs. 424 odd. The defendants contended that they held only 129 bighas at a rent of Rs. 89 odd according to the *survey and jamabandi* of 1190 B S. (1783) made by the officers of Government, and that no talukdar or zemindar could enhance the rents of the under-tenants of land in the 24-Perganas settled on the occasion of the public survey and measurement. The Sádar Díwáni Adálat said—" We are of opinion that the respondent is entitled to enhanced rent on the tenure of appellants according to the current local rate. By section 57, Regulation VIII of 1793, a zemindar may levy increased rent at such rate, except on the tenures declared exempt from increase. Appellants have filed papers purporting to show particulars of the admeasurement and *jamabandi* of 1190. The lands are there stated to be 125 bighas 1 biswa, assessed with the rent of Rs. 86 odd, that is, something less than 12 annas per bigha. From the inquiries of the Amin and Munsif it appears that, according to the rates now current in the vicinage, the proper rent of 197 bighas 2 biswas would be about Rs. 400. This gives an average of more than two rupees per *bigha* (or an increase of 166 per cent). It is evident, therefore, that since the year 1190 until now *the local rent of land has been progressively increasing*. Appellants admit the tenure of 129 bighas 2 biswas of mal land, but have failed to establish any right to hold the same on any invariable jama. Amending, therefore, the decree of the Court of Appeal, we award to the respondent the right to levy from these lands rent at the customary rate. Let the respondent proceed under Regulation V of 1812 to assess the proper rent on the same and any other *mal* lands held by the appellants, which he may consider liable."

21. In *Durga Persad Clementi* (6 S. D. A. Rep. 218) the holder of a *mukurari* tenure had absconded and the *then* proprietor gave the land to a new tenant at the old rent. It was held (1837) that a subsequent purchaser, at a sale for arrears of revenue, of the estate in which the tenure was included, was entitled to enhance." "The respondent," it was said, "is entitled to rent according to the pergunnah rates, and as these are ascertainable from the records of the Collector's office, copies of which have been filed, I would give judgment accordingly, taking these rates as the basis of the calculation of the rent to be annually paid the defendant."

22. In *Sobnath Misser, &c.*, v. *Geinda Lal, &c.* (7 S. D. A. Rep. 182) it was held that the enhancement notice required by section 9, Regulation V of 1812 must specify the rent to which the parties served with it are to be made liable, and must intimate how the landholder has acquired the right of enhancing the rent.

23. In *Maharajah Kisher Kishore Manik* v. *Rajchunder Dhur, &c.*, (7 S. D. A. Rep. 311), the plaintiff's title to assess the defendant's talook at the pargana rates was held to be unquestionable, and the enhancement notice was held not to be bad because it did not specify the quantity of land in the possession of the tenants or the names of the parties in possession, it being sufficient to specify the names recorded in the *zemindari sarishta* or office.

24. In *Ganga Persad Ghose* v. *Ram Fotdar, &c.* (7 S. D. A. Rep. 314) the plaintiff claimed, under clause 8, section 15, Regulation VII of 1799, damages against the *raiyats* for opposing him and preventing him from *measuring* his estate. Under the head of damages he included the excess of rent that he would have been entitled to had the *measurement and consequent assessment* been effected. The Sadr Díwání Adálat held that he was entitled to damages, and directed the deputation of an *amin* to ascertain the rents of the estate in order to assess the damages.

25. The case of *Mulvi Abdula Ramzi Dye* (7 S. D. A. Rep. 370) was a suit to recover possession brought by the transferree of a raiyat's holding who had been ousted. The Sadr Díwání Adálat declined to pronounce any decision upon the general question of a raiyat's right to sell his holding; but finding that transfers by the raiyats had been sanctioned in the particular property by the landlords, who were *matawalies*, decided that, if the present *matawali* considered the particular transaction illegal, he should have taken his legal remedy by an action at law instead of ousting the plaintiff.

26. In *Mirtunjai Mukherji* v. *Manick Chundra Das* (7 S. D. A. Rep. 506) the plaintiff, alleging himself to be the twelve-anna proprietor of a certain *hawala*, sued to enhance the rent of his *nim-hawaladars* on the ground that the ten-anna sharers of the taluk, under which he held his *hawala*, had by a decree of Court enhanced his rent. The Principal Sadr Amin held that the subordinate tenants were liable to enhancement in the same proportion as their superior tenure-holders. The *Sadr Diwani Adalat* set aside this decision, holding that he ought to have enquired into the rates paid in the pargana by *nim-hawaladars* to *hawaladars* and have decided accordingly, awarding rent at those rates. The case was therefore remanded that this might be done.

27. In *Darpanarain Rai* v. *Srimunt Rai, &c.* (S. D. A. Decisions for 1849, p. 188) it was held that a ryot who had paid an uniform rent for more than twelve years as for a certain supposed quantity of land was not thereby debarred from claiming a *measurement* of the land actually in his occupation, and reduction of his rent upon the *pargana* rates according to the result of such measurement.

28. *French* v. *Kissen Kumar Khan, &c.* (S. D. A. Decisions for 1849, p. 459) was a suit by a *darpatnidar* to enhance the rent of a *mirasdar* holding directly under him. A *dar-mirasdar* and *se-mirasdar* were joined in the suit unnecessarily, as the Sadr Díwání Adálát thought.

29. *Jai Narain Bose* v. *Madhub Chandra Sikdar* (S. D. A. Decisions for 1849, p. 764) was remanded to try whether the ryot's tenure in dispute had been acquired before the Permanent Settlement by the party then in possession on a recognition of his being a resident cultivator or ryot with hereditary rights of occupancy at a fixed rent, and also whether the Permanent Settlement formed for the 24-Parganas district was granted on the basis of the *pattadari* or *jamabandi* engagements that had been previously concluded with such ryots by the Government being maintained inviolate.

30. In *Harnath Rai* v. *Gauri Persad Bhattacharjya* (S. D. A. Rep. for 1856, p. 611) a suit for enhancement was dismissed, the tenure being found to be a *mukarrari* one, which had existed twelve years before the Permanent Settlement. Former decrees between other parties were here admitted as evidence of the nature of the tenure.

31. In *Digamber Mitter* v. *Ram Sunder Mitter* (S. D. A. Rep. for 1856, p. 617) it was held by four Judges out of five that the Law of the Limitation did not apply to claims for enhancement of rent by a landlord against a tenant, when the latter holds no lease determining the rate of rent payable by him and did not come within the exceptions of the Sale Law Act I of 1845, *first*, because the claim to assess is a constantly recurring cause of action; *secondly*, because the possession of the tenant under the circumstances is not adverse to the landlord, but only *permissive*.—*See* also *Digamber Mitter* v. *Harinarain Chuckravarti*, S. D. A. Rep. for 1860, p. 113.

32. In *Hurdeb Pridhan* v. *Ram Kumar Mustaufi* (S. D. A. Rep. for 1856, p. 771) the plaintiff sought to enhance, and the defendant unsuccessfully set up a *mukarrari* title alleged to have been in existence twelve years before the Permanent Settlement.—*See* also *Ram Ruttan Rai* v. *Tripura Sundari Dasi*, S. D. A. Rep. for 1859, p. 465

33. In the matter of *petition* No. 740 of 1856 (S. D. A. Rep. for 1857, p. 214) it was said that *khudkasht raiyats* are by no means exempted by law from suits for enhancements; that it may at any time become a question whether or not land held by them is fairly assessed.

34. In *Jainarain Bose* v. *Mussamat Radhamoni* (S. D. A. Rep. for 1859, p. 623) the Sadr Diwani Adalat said:—"The Zillah Judge has clearly held that the tenure of the raiyat was not any one of the special classes which it was the purpose of section 26 of Act I of 1845 to protect from discretionary enhancement. Not being a *khudkasht raiyat*, what is the status of the present defendant? The essential characteristic of the tenure of a *khudkasht raiyat* is the right of *prescriptive occupancy*. But in this case the *raiyat*, it has been found, has no such right; and necessarily he is simply a *raiyat* whose occupancy arises *from the discretion of the zemindar*. For the purpose of the present contest we have no intermediate class of raiyats between *khudkasht* or old resident *raiyats* and *raiyats* who hold their lands from year to year; and to all who are not *khudkasht raiyat* Act I of 1845 applies one rule. Clearly, therefore, section 26 of Act I of 1845 empowers the *zemindar*, plaintiff in this action, to enhance at discretion the rent payable by the *raiyat* defendant, anything in the existing Regulations to the contrary notwithstanding; and it appears to us that as the defendant in his appeal to the Judge failed to establish his title to the possession of any tenure which should exempt him from the operation of this rule, it was not competent to the Judge to set aside the finding of the Principal Sadr Amin as to the rates or *quantum* of rent payable by the raiyat. The Judge has observed that the zemindar in conformity with clause 2, section 60 of Regulation VIII of 1793, section 9 of Regulation V of 1812, and other enactments bearing on the question, can enhance only according to the *general rates of the pargana;* but the first law here quoted, viz. clause 2, section 60 of Regulation VIII of 1793, refers to the assessment of *khudkasht raiyats'* lands and (whatever construction should be given to it when a question arises) is not applicable to the present suit; and undoubtedly, considering the limited interest possessed by the *raiyat* defendant now before us, the rules as to rates laid down in Regulation V of 1812 are modified by section 26, Act I of 1845. It seems to us to be the object of this enactment to enable zemindars *to revise at their discretion the assessment of the lands occupied by raiyats*, who have not a permanent right of occupancy; that in this sense it distinguishes between *raiyats* who have and those who have not a right of prescriptive occupancy; and that *the will and interest of the zemindar are intended by the law to be the measure and regulator of the rent to be demanded from raiyats, whose occupancy is limited and temporary.*

35. In *Rajah Prasannonath Rai* v. *Bungshibudhun Das* (S. D. A. Rep. for 1857, p. 973) it was laid down that it is *erroneous to suppose that the right to enhance rents is confined to auction-purchasers*, and others, named in sections 9 and 11 of Regulation V of 1812; that these sections only lay down rules in which the mode of enhancement is pointed out, and for extending it to other parties than those already enjoying it, but that *all landholders possess the right.*

36. In *Rani Oojulla Kumari* v. *Birjo Mohan Hajra* (S. D. A. Rep. for 1857, p. 1268) it was pointed out that it was not for the landlord plaintiff to show that the tenant defendant's lands were liable to

enhancement, but for the tenant to show that his lands were not liable to enhancement.—*See* to the same effect *Radhika Chaudhrain* v. *Bholanath Ghose*, S. D. A. Rep. for 1859, p. 677, and cases there cited.

37. In *Ruttun Kishore Rai* v. *Khaja Abdul Gani* (S. D. A. Rep. for 1857, p. 1413) a majority of the Court held that a tenure was liable to enhancement which, though in existence at the time when the Permanent Settlement was made, had not been held at a fixed rent for twelve years before such settlement. The tenure here was a *kawala* in Backergunge.

38. In *Ram Kanye Chaudhri* v. *Ajudhiram Dutt, &c.* (S. D. A. Rep. for 1858, p. 653) it was laid down that the mere fact of the defendant being a *khadimi raiyat*, who had held for more than fifty years, or the fact of his being allowed to hold at a certain rate for a series of years without any written engagement, could not bar the zemindar's right to enhance.

39. *In the matter of the petition of Mukdun Bibi* (S. D. A Rep. for 1858, p. 1013) a District Judge was held to be in error in ruling that only auction-purchasers could apply the provisions of Regulation V of 1812 to claims for enhancement of rents. To the same effect is *Rani Mohamya Dasi* v. *Nilmani Jugi*, S. D. A. Rep. for 1858, p. 1800.

40. In *Sreemunt Addy Photedar* v. *Ram Tonu Karmakar* (S. D. A. Rep. for 1859, p. 930) the holder of a shop was held not to be in the position of a *khudkasht raiyat*, but to be subject to enhancement at the pleasure of the owner and liable to ejectment if he failed to pay the enhanced rent demanded.

41. In *Jogendro Chandra Rai* v. *Tarachand Khan, &c.* (S. D. A. Rep. for 1859, p. 1303) it was held that under section 9, Regulation VII of 1822, it was quite competent to a zemindar, notwithstanding his acceptance of a settlement from Government, to maintain a suit to set aside the rates entered in the settlement *jamabandi*; and that, to entitle him to succeed in such a suit, it was only necessary for him to show that the rates therein entered are not the *pargana* rates which lands of the particular nature and in the particular situation ordinarily bear. Where such a suit was brought ten years after the acceptance of the settlement rates, it was held that it lay on the plaintiff to show that since the settlement circumstances had occurred which had tended to raise the value of the raiyats' lands, and consequently to entitle him to an increased share of the surplus profits of those lands, or in other words to an enhanced rent.

42. In *Guru Charan Dass* v. *Mudu Kushai* (S. D. A. Rep. for 1859, p. 1243) it was decided that the purchaser of a dependent *taluk* under Act VIII of 1845 was not entitled to raise the rents of tenants with fixed rights acquired by grant, prescription, or otherwise; but the defendant in that particular case having failed to prove a *mukurrari* interest set up by him, was held to be a tenant without any rights other than those of occupancy, and to be therefore liable to have his rents raised according to the capabilities of the land.

43. The case of *Lalla Sheo Lal* v. *Nobodip Chandra Sirkar, &c.* (S. D. A. Rep. for 1860, p. 10) was remanded to try whether defendant was entitled to exemption from enhancement, because his *jama* was fixed under a lease of the period of the Decennial Settlement held continuously since then at uniform rates, so as to be covered by the term *khudkasht* or *kadimi* in clause 3 of section 26 of Act I of 1845.

No. 2760, dated Calcutta, the 3rd November 1884.

From—C. S. Bayley, Esq., Offg. Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of Bengal, Revenue Department.

In continuation of my letter No. 2612, dated the 15th September 1884, I am directed to forward, for the information of His Honor the Lieutenant-Governor, copy of a minute by the Hon'ble Mr. Justice Tottenham, on the Bengal Tenancy Bill.

2. Nine spare copies of the minute are enclosed.

THE BENGAL TENANCY BILL, 1884.

Until the vacation I was unable to find time for the study of the provisions of this Bill with a view to offering the Government of India any remarks upon the subject in answer to the invitation contained in the Secretary's letter No. 785 of the 5th of May last. At this late period I should hesitate to trouble the Government with any observations, none of which probably will be new to the Council, were it not that I feel that as many as possible of the Judges of this Court should express their opinions, whether held in common with numerous other persons or peculiar to themselves individually.

2. The only Judge who, as far as I am aware, has submitted to Government any detailed criticism of the Bill is Mr. Justice Field in his minute dated the 11th of September. As I entirely agree in many of his comments on particular sections of the Bill, while not assenting to others, I propose for the sake of brevity, and to avoid repetition, to state in order the paragraphs of his minute dealing with sections of the Bill in which I concur. As to some of the other sections, I think his remarks are based on misconception of what the Bill intends, and as to others, while not considering it necessary to express assent to his observations, it does not follow that I dissent from them.

3. I would endorse Mr. Justice Field's remarks in the following portions of his minute:—

The first 5½ lines of para. 2.
The last 3 lines of para. 4.
The substance of para. 5, as to the imperfect definition of "Tenure-holder."
Paras. 19 and 20.

Para. 23 as to clauses (*a*), (*d*) of section 31; and as to clause (*f*) in regard to the limit proposed to be put upon the right of transfer of a right of occupancy. But I should prefer to have the right made non-transferable at all at the pleasure of the ryot.

Para. 25 as to allowing the zemindar a right of pre-emption in the case of a gift to a person other than the donor's heir and as to sub-section 6 of section 31.

Para. 28.
" 29.
" 30.
" 33, as to the substitution of "staple *food*-crops" for "staple crops" in clause (*b*), section 43.
Para. 36.
" 39.
" 40.
" 43.
" 46.
" 51.
" 59.
" 64.
" 80.
" 88.
" 90.
" 92. I would have no presumption on either one side or the other.
" 96.
" 107. First Part.
" 113.

4. The criticisms in these paragraphs are chiefly directed to the wording of the Bill; and I think they usefully indicate particulars in which that wording may be improved, while they do not generally question the principles of the Bill. Assuming for the present these principles to be correct, I would offer one or two other suggestions which I think might usefully be adopted.

5. I do not understand, as seems to be apprehended by Sir R. Garth and Mr. Justice Field, that it is intended to exclude from the operation of the proposed Act tenants on lands belonging to, or under the management of, the Government, so far at least as their legal status is concerned. I gather indeed from the contemplated repeal of Act VIII of 1879 of the Bengal Council that it is intended, as regards the important subject of enchancement, to place Government in the same position as other landlords: but if there is, as Mr. Justice Field opines, anything in the definition of "Estate" in section 3 which makes it doubtful whether the Bill is intended to apply to Government estates, this doubt should be removed by the amendment of the definition. The Government still retains to itself a far more advantageous position than that of other landlords in respect of realising rents by means of the Public Demands Act, VII (B.C.) of 1880.

6. It seems obvious from what both Sir R. Garth and Mr. Justice Field have written that some better definition of tenure-holder must be devised; and I hope that in so doing the Council will see its way to laying down some clear distinction between a tenure-holder and a ryot. I admit the difficulty of framing satisfactory definitions; but it is one which should be dealt with by the legislature, and not merely shifted on to the Courts by referring them to supposed "local customs." the present existence of which is undefined, but the future invention of which will be as multitudinous and various as the exigencies which demand them.

7. In section 7 and many others throughout the Bill there occurs the expression "fair and equitable." The two epithets surely mean the same thing in all these sections; but if the two words are enacted together we shall have acute Pleaders and Munsifs proving that what is "fair" is not "equitable" and *vice versâ*.

8. Amongst the incidents of permanent tenures referred to in section 11, I should like one to be that they may be relinquished, and that the Bill should contain provisions for their holders giving them up if so minded. It would be a new incident certainly, but the Bill contemplates so many innovations that novelty can hardly be regarded by the Council as an objection.

9. Section 13 appears to me to be superfluous, the very nature of a patni tenure implying the power to let the land comprised in it.

10. In the last line of sub-section 2, section 16, the sense seems to require that after the word "cause" should be inserted "to the contrary," or words to that effect.

11. I do not understand the principle upon which the penalty of fine is imposed under section 22 (2). By whom is it to be adjudged and levied? and for whose benefit?

12. A ryot holding at a fixed rent is really what has hitherto been known as an istemrari mocurraridar. Would it not be as well to recognize him as a tenure-holder in all respects; and not have to enquire after local custom in determining whether those who hold under him can acquire a right of occupancy?

13. As regards the right of occupancy, I think it should be incapable of being acquired in respect of land in regard to which the tenant has a right only to the natural produce of it, *e.g.*, the right to cut grass or to turn in cattle to graze. A case recently came before me in which a Munsiff and a Subordinate Judge had both held that a person to whom this grass right had been let for more than 12 years, had acquired a right of occupancy in the land, notwithstanding that by the terms of his written agreement it was clear that he had no right at all in the land itself.

14. I am very strongly impressed with the injustice exposed by Sir R. Garth and Mr. Justice Field of the presumption created by section 26 (2).

15. I think too that the right of occupancy as to land held by a ryot should not be presumed to extend to all land held by him in the same estate, which may comprise several pergunnahs. If he be given a right of occupancy in all that he may hold in one *village*, there is no reason for granting him further indulgence at the expense of the proprietor.

16. As to the transferability of the right of occupancy, I entirely agree with those who are opposed to its recognition by the Bill. It was not an incident of the right, as far as I can make out, at the time of the permanent settlement: and I am convinced that it is a boon that is likely to do more harm than good to the ryot, while its recognition may work great mischief and annoyance to the zemindar. Its justification seems to rest chiefly upon the principle, which this Bill very largely assumes, that the right of the ryot is equal or superior to that of the zemindar; and that consequently he has as good a right as the zemindar to alienate the land of the estate. It seems to me that this principle is not a true one; and that the right of the ryot is limited to holding it as a tenant so long as he pays his rent and uses the land in a proper manner.

17. On the other hand, I think the occupancy ryot should be subject to ejectment for non-payment of rent. It should only be by suit, and such conditions should be attached to the incident as would protect the ryot from undeserved hardship. But there are many cases in which the fear of ejectment should I think be retained. Most officers who have served in Lower Bengal are familiar with combinations of ryots to withhold their rents, though well able to pay them, and in such cases I think the penalty of ejectment is fully deserved, and should be left in the hands of the zemindar to be applied through the Court.

18. Another matter which I think should be provided for in the Bill is the repudiation by a tenant of his landlord's title. Judicial decisions have established the tenant's liability to be ejected at the landlord's suit under such circumstances, and it seems to me that the law should either affirm or negative this principle.

19. The only observation which I wish to make on the subject of enhancement of rent is that I do not appreciate the justice of limiting the landlord to a certain percentage of the existing rent by way of enhancement, if the facts which entitle him to enhanced rent entitle him to more than that percentage. Suppose a ryot is paying less than half the prevailing rate, I do not see why the enhancement should not extend to that rate by the progressive steps contemplated in section 49.

20. As to commutation of rent in kind to a money rent, I am of opinion that, unless both landlord and tenant wish for it, the Collector should have no power to make it. Sub-section 6 of section 58 gives the officer power to refuse the application if opposed: but the earlier part of the section makes no provision for informing one party of the application having been made, but simply empowers the officer, upon the application being made, to determine the sum to be paid and to make order accordingly. This is probably an oversight.

21. Referring to section 59, I am of opinion that if it is necessary to interfere with the landlord's right to get rid of a non-occupancy ryot on the expiry of his lease, there is no sufficient ground for requiring him to give six months' notice. Three months' notice would be ample. The provision that a suit for ejectment shall not be instituted after six months from the expiration of the term seems to indicate that, should the landlord fail to bring a suit to eject the ryot who has had, say, a three years' lease, within six months from the expiry of that lease, the ryot thereby acquires an immediate right of occupancy; for if he cannot be displaced he can stay as long as he likes. The zemindars have, I think, a right to be protected against such a contingency.

22. Sub-section 7 of section 60 unduly facilitates the acquisition of a right of occupance against the will of the proprietor of the land, and is therefore to my mind objectionably. Indeed the whole Chapter VI goes far to cut away the proprietor's power to do what he likes with his own land.

23. If an under-ryot, by the operation of some local custom now supposed to exist or hereafter to be invented, acquires a right of occupancy, is it to hold good only as against his immediate lessor or also as against all superior holders, and to be transferable and subject to all the incidents of its parent occupancy right?

24. I deprecate the interference of Government in such a matter as the fixing of rent days as between landlords and tenants, contemplated in section 67. In the absence of specific agreement I would simply direct the Court to assume that the rent is payable in quarterly or half-yearly instalments as may seem best to the legislature.

25. I would strike out sub-section 3 of section 72.

26. It is fair that a ryot ejected from his holding should receive any compensation to which he is equitably entitled for improvements made by himself, or any person from whom he has inherited the holding; but if he himself acquired the holding by sale in execution of a decree, which will sometimes be the case if the ryot's right is made transferable, why should he receive compensation for improvements made by his predecessor in title? (Section 93.)

27. Sub-section 2 of section 94 seems somewhat officious, unless it be intended that, except by special enactment, the landlord and tenant may not settle any question amicably between themselves.

28. Two years seems to me an excessively long period to be allowed to a ryot who has ostensibly abandoned his holding for bringing a suit to recover possession. I think that a condition precedent to the hearing of any such suit should be the deposit of the rent due for a period during which the ryot has ceased to pay. On what sort of ground is it intended that he should get a decree for possession?

29. In the chapter on Managers, it is provided in section 107 that a manager shall receive remuneration by salary or otherwise. I think this should be dispensed with where a co-owner is appointed manager. He will probably get advantages from the position which will render salary no object.

30. With reference to sections 129 and 130, I should be inclined to make the Commissioner's order final as to the entries in the table of rates; inasmuch as the local officers must possess more knowledge of local rates than will be available in the offices of the Board of Revenue or of the Bengal Secretariat.

31. As regards the proposed record of a proprietor's private lands, I am of opinion that, unless the proprietor desires to have it made, there should be no authority vested in the Government or the Collector to interfere in the matter.

32. In the chapter on judicial procedure I should like to see provision made for the case in which the ryot pleads that the rent claimed was payable to a third party, and has been paid to him. Section 164 does not meet this case, which will therefore frequently arise.

33. The proviso to section 168 gives the District Judge power now vested in the High Court under section 622 of the Civil Procedure. I think it should be explained that to make a mistake in law is not an illegal act. Applications are constantly being made to the High Court for relief under section 622 in respect of errors of law in legal decisions.

34. When the Court makes a decree under section 173, declaring the liability of the defendant to pay a fair rent for the land in his possession, is the decree to have retrospective effect, and for how far back? This matter ought to be settled.

35. No provision is made for the realization of rent separately by different co-sharers, nor as to the effect of sales in execution of decrees for shares of the rent. Some Members of the Council must be aware that there are very many properties in Bengal held by two or more co-sharers, who have for a long period peaceably and, with the assent of the tenants, separately collected their undisputed shares of the rent, and have, when necessary, brought suits and obtained decrees for such shares. In such cases the provisions of section 102 as to managers do not apply; nor do I suppose that the legislature intends to put a stop to long established and unobjectionable practice. Suits therefore will continue to lie in many cases for fractional shares of rent, and provision ought to be made for the execution of decrees to be obtained in such suits.

36. Before conluding I think it right to express very briefly my opinion of some of the leading principles of the Bill. That it goes far beyond the scope of reproducing the relation of landlord and tenant as it existed at the time of the permanent settlement, is not to my mind a matter for objection. But I do think it objectionable that the mutual rights of the two should be arbitrarily changed to the advantage of one side and the detriment of the other. I think that the Bill tends in this direction by ignoring to a considerable extent the zemindar's status as proprietor; and by unduly exalting the status of the tenant into what really becomes that of a joint-proprietor with the larger interest. The impossibility of the zemindar's retaining any portion of his lands, except his khamar, free from permanent tenures and occupancy rights, and the arbitrary restrictions put upon his admitted right to enhance rents under certain circumstances, as well as the multitudinous occasions for interference with his affairs by the local Government or the revenue officers, combine to lower his position very seriously, and I think unnecessarily.

37. I think the power of summary distraint should not be taken from the landlord. In some parts of the country it is the only means of securing the rent, and the plan now proposed to be substituted is more tedious, uncertain, and costly.

38. I am strongly averse to the prohibition of free contract between landlord and tenant unless there can be shown better reason for it than I have yet seen. What is true, or may be true, of Behar, is not true of Bengal; and to make one Act apply equally to both is hardly possible. The Bengali ryot as a rule is fully competent to take care of his own interests, and he is less likely now to be victimized than he was in former days when there was less education and fewer local lawyers.

39. Finally I would say that, while there is much in the Bill that promises to be useful, it appears to me to be in other respects unpractical, as tending to complicate, instead of simplify and secure the relation between landlord and tenant; to foster litigation and bring down the interference of the authorities, rather than promote peace and mutual confidence between the two classes while impartially maintaining the respective rights of each.

L. R. TOTTENHAM.

COONOOR,
18*th October* 1884.

No. 2944, dated Calcutta, the 20th November 1884.

From—C. S. BAYLEY, Esq., Officiating Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of Bengal, Revenue Department.

IN continuation of my letter No. 2760, dated the 3rd instant, I am directed to forward, for the information of His Honor the Lieutenant-Governor, a copy of a minute by the Hon'ble Mr. Justice Cunningham on the Bengal Tenancy Bill.

NOTE ON THE BENGAL TENANCY BILL, 1884.

Concurrence of Secretary of State and the Government of India as to principles of the Bill.—The facts which necessitate legislation on the law of landlord and tenant in Bengal, the principles by which legislation on the subject must be governed, and the general lines in which it should be framed, were, as long ago as December 1882, agreed upon by the Secretary of State and the Government of India.* Accordingly, in inviting an expression of opinion as to the Bill framed on the lines thus laid down, the Government of India cannot be understood as intending to re-open controverted points, upon which, after years of enquiry and elaborate discussion, an agreement has been arrived at, but rather as inviting consideration as to the degree in which the Bill is calculated to effect the objects which the Legislature admittedly had in view.

* The Government of India to Secretary of State, 21st March 1882.
Secretary of State to Government of India, 17th August 1882.
Secretary of State to Government of India, 11th January 1883.

2. *Opposition still to be encountered.*—But it is obvious that a strenuous effort will still be made by those who consider their interests endangered, and by the advocates of those interests, to obstruct the passing of any measure which, in any degree, embodies the principles which these high authorities have, concurrently, sanctioned for the forthcoming legislation. The opposition is fortified by high authority; the Bill is denounced, not only by interested partizans, but by officials of eminent position, as unjust, impolitic, inconsistent with the good faith which the British Government is bound to maintain, as involving ruin to the zemindars, and scarcely less serious injury to the ryots. A powerful organization of resistance has been formed, and is actively at work in India and England. Numerous meetings have been held all over the Province. Numerous petitions have been submitted from influential quarters to the Government, the Secretary of State, and to Parliament. A controversy, so ardent and so prolonged, is necessarily unfavourable to calm thought or temperate language. Free recourse is had to every topic which can excite odium or appeal to prejudice. In the heat of argument assertions of the most unfounded character are confidently made; facts, for which the most unquestionable evidence exists, are recklessly denied; principles on which every political economist and every civilized Government have been long agreed, are either tacitly ignored or boldly called in question. It is obvious that those who believe a measure of the character of the one in question to be expedient, and even necessary, must be prepared to defend it *ab initio*, and for this purpose to reproduce facts and arguments which, it might have been supposed, had long ago done their work and been relegated, as historical curiosities, to the armoury of obsolete disputes. It may be worth while, accordingly, to recapitulate, in as concise a manner as may be, the problem with which we are confronted in Bengal, the facts which appear to be satisfactorily established with reference to it, and the principles which, unless the Government of India is to abandon not only its own carefully considered policy, but the precedent of every civilized Government and the axioms of every system of political economy, must govern its solution.

3. *Report of the Government of Bengal, 15th September* 1884.—In speaking of the Bill, I shall, as a rule, speak of the measure as modified by the proposals of the Bengal Government in its report of 15th September 1884. That letter represents the conclusions at which the Lieutenant-Governor of the Province has, after a consideration of the opinions of the local officers best acquainted with the subject, arrived. Much stress has been laid by some of the opponents of the Bill on the circumstance that, though there were repeated controversies as to matters of fact, no witnesses were examined before the Select Committee. It is worth while, accordingly, to notice the procedure which has been adopted on the present occasion for obtaining a knowledge of the facts of the case and an expression of opinion from all classes concerned. The Bill was first published in the *Calcutta* and vernacular Gazettes, and translations were made available to the public at a nominal price. The Board of Revenue, the Commissioners, District Officers, such Judicial Officers as had special acquaintance with the subject, were then addressed, as also were the various public bodies who are concerned in the discussion. A circular letter was then issued, directing the attention of the officers consulted to the chief points for enquiry and report. The District Officers were directed to make enquiries on all obscure points, to consult all those interested in the subject and willing to give advice, and then to meet their Commissioners and discuss with them the clauses of the Bill in the light of actual facts prevailing in each district. These instructions were carried out, and "conferences" were held in the various divisions, at which the local officials discussed the topics of the Bill from their own point of view. The Government of Bengal, with good reason as it would seem, regards the evidence and opinions thus collected as of the greatest value. Such a course appears to be in every way superior to the examination of witnesses before a Select Committee in Calcutta. Instead of a single inquiry, conducted by a Committee, the majority of whom entertained and had already avowed a decided opinion on one side of the controversy, the procedure followed provided for a number of local inquiries, conducted by officers whose views were, presumably, as favourable to the one side as the other; who knew the people whom they questioned and the quarters in which valuable information was most likely to be got; who had the advantage of comparing their own knowledge with that of neighbouring officials, and who could collate and discuss the evidence at leisure. No such body of weighty and well-considered evidence could be got together by a Select Committee without an expenditure of time, money and labour, and a derangement of the administrative machinery of the country, which would be quite inadmissible. The Government has, in its executive district officers, an excellent machine for collecting

information, and I believe the examination of witnesses before a Select Committee would be in every way less effectual in getting at really trustworthy facts or really well-considered opinions. The Government of Bengal says that the evidence "reflected impartially every shade of opinion," and that it is remarkable for the proof it affords of the necessity, not only of legislation, but of legislation in the general direction of the Bill, inasmuch as even those officers who are most opposed to the measure admit by their comments the necessity for improvement in the law. Now, which is more convincing, the opinion thus arrived at by the Lieutenant-Governor of the Province, or the vague and violent language of those who assure us that no change is expedient, and that the proposed law will be the ruin of the country? When the Government is solemnly warned against the proposed legislation as unjust, unnecessary and dangerous, and urged either to withdraw on materially modify it, the answer appears to be that an overwhelming majority of responsible witnesses agree that some change is imperatively necessary; that the necessity for change was felt almost immediately after the passing of Act X of 1859; that that Act has in many important particulars produced results the very opposite to those contemplated by its framers as regards the well-being of the ryots;* and that the evils thus produced can be met only by the exercise of the Government's right of interference on his behalf. Since the affairs and troubles in Pubna in 1873, the necessity has been admitted to be urgent.

* "The Bill is a real and earnest attempt to improve the position of the ryots of Bengal, and to open to them a prospect of freedom and independence, which they have not hitherto enjoyed, by clearly defining their rights, and by placing restrictions on the power of the zemindars such as ought long ago to have been provided. This being so, I think that the Bill ought to pass into law." (Lord Canning in assenting to Act X of 1859, 29th April 1859.)

4. *Sir A. Eden's letter of 27th July* 1881.—All these conclusions were formally stated in the report of the Rent Commission appointed by Lord Lytton in 1879, and in Sir A. Eden's letter of 27th July 1881, which it is greatly to be desired that those who deprecate legislation should consult. Have the general conclusions there set forth been confirmed or shaken by the information elicited during the last three years? It appears to me that it is impossible, having regard to the concurrent opinions of the persons most qualified to judge with information and insight, to doubt that some change is essential, and that the State is not only at liberty, but bound to interfere with the object of protecting the agricultural tenantry of Bengal from the natural and inevitable results which, in the absence of legislative protection, the circumstances of the Province must inevitably entail upon them.

5. *Secretary of State's letter to Government of India, 17th August* 1882.—This, as already observed, is no longer, so far as Indian officials are concerned, a mere matter of opinion, inasmuch as the Secretary of State has pronounced an authoritative decision that, "whatever may have been the former intentions of Lord Cornwallis, it is fully established that the reservations made at the time of the Permanent Settlement give the Government of India the full right of interposition for the amelioration of the condition of the Bengal peasantry," and that legislative interference is justified by the present circumstances of the country. We may take it moreover, as laid down by the same high authority on the same occasion, that the object of the present legislation is "to settle the land-law of Bengal on a firmer, juster and more satisfactory basis; to keep the cultivation of the soil in the hands of a substantial peasantry, able to withstand the vicissitudes of seasons; and to promote the accumulation of wealth, the sound growth of credit and the progress of agricultural improvement."

6. *Circumstances of Bengal which justify legislation.*—This decision, however, is vehemently contested. The landlords and their advocates boldly assert their right "to do as they will with their own" as regards all tenants not at present enjoying legislative or customary protection, and denounce the proposal to increase that protection, or to afford it to any other class, as grossly unjust, a breach of faith, and revolutionary. It may be well, therefore, to glance at the facts necessary to support the propositions, *first*, that the special circumstances of large portions of Bengal are such as, if uncounteracted, to ensure the degradation and misery incidental to a redundant agricultural population crowding on the soil; and *secondly*, that the Government has the right to interfere for their protection, and is bound to exercise that right.

7. *Local extent of Bill.*—It should be premised, that the Bill does not, unless hereafter specially extended, apply to the Orissa Division or to those portions of the Province known as the "Scheduled Districts," viz. the Julpigori and Darjeeling districts, the Hill Tracts of Chittagong, the Sonthal Pergunnahs, the Chota Nagpore Division, and some other localities. Two only of the four Provinces which constitute the Lieutenant-Governorship of Bengal are affected, viz. Bengal and Behar, and from these must further be excluded the wild district, lying between the two, known as the Sonthal Pergunnahs, the wild and mountainous Chittagong Hill Tracts on the extreme east of the Province, and the two East Himalayan districts. Bengal Proper contains 70,000 square miles, exclusive of 5,000 or 6,000 miles of unsurveyed and unreclaimed land in the Sunderbuns. Behar contains 44,000 square miles. The districts in these two Provinces to which the Act will not apply aggregate about 15,000 square miles, and contain a population of rather more than 2¼ millions. Orissa contains 9,000 square miles and Chota Nagpore 26,000. The result is that of the 150,000 square miles in Bengal, the Bill will apply to 100,000 and will not, unless specially extended, apply to 50,000.

The inhabitants of Bengal and Behar number 58½ millions, or 84 per cent. of the entire population of the Province. The population immediately affected by the Bill will, accordingly, be about 56 millions.

8. *Dense population of Bengal.*—These two provinces, constituting as they do the valleys and delta of several magnificent rivers, and enjoying a rich alluvial soil, a plentiful rainfall, an easily-raised crop, and a tropical climate, present conditions highly favourable to the multiplication of the human race, and the population is denser than any known in the agricultural districts of Europe. Bengal has a ratio of 505 to the square mile and Behar of 527. This ratio, however, is greatly exceeded in particular localities. In Behar, for instance, the Patna, Mozufferpore and Sarun districts show a ratio over 800 to the square mile, and the Durbhunga district 789. In Bengal, the Hooghly district shows 737 to the square mile; Howrah 1,130; the Jessore district has 682, and the 24-Pergunnahs 679; the Pubna district has 710, and Rajshahye 566. Two districts in the Dacca Division show over 700 inhabitants. When we compare these figures with other agricultural countries, the contrast is remarkable Ireland has 181 inhabitants to the square mile, France 180, Italy 238, Prussia 185, Austria 175, Belgium and England, with their huge and urban populations and enormous non-agricultural resources, 486 and 485 respectively.

9. *Exclusively agricultural character of the population.*—The first fact, then, with which we are confronted is that we have to deal with a population of unexampled density. But this is not the only circumstance which has to be considered in the case of the inhabitants of Bengal, or which renders it, *a priori*, probable that interference on the part of the ruling power would be necessary in past times and will be necessary in future. There is, first, the character of the population, which may be said to be, as regards large portions of the Province, exclusively agricultural. There are no great manufacturing cities—indeed, no cities at all in the European sense of the word—except Calcutta, Patna, Benares, Gya, Bhagulpore, Dacca, and two or three more. In the whole Province there are only 11 cities with more than 50,000 inhabitants, and only 33 with more than 20,000. More than half of all towns and villages contain less than 200 inhabitants, while 87 per cent. are "little hamlets with less than 500 inhabitants." The entire urban population is 3¼ millions, about 5¼ per cent. of the whole, an exceptionally low proportion, as compared with 66 per cent. in England and Wales, 31 per cent. in France, 22 per cent. in America, and even 17 per cent. in Bombay, 9 per cent. in Madras and the North-Western Provinces, and 11 per cent. in the Punjab. Of 34¼ millions of male, 15¾ millions were recorded in the census of 1882 as "agricultural," against 2½ millions "manufacturing and industrial;" and it is certain that the class designated "indefinite and non-productive," which numbers 15¾ millions, contains large numbers who, in one way or another, look to the soil for support. There is no great manufacturing industry. The exports of Bengal are all either raw produce or agricultural produce, very slightly manipulated by the producing agriculturists. Again, there is the greatest reluctance to a change of residence: while in some parts of the province the population is 869 to the square mile, and there is practically no waste land, so that the competition for agricultural holdings is intense; in others there are still great tracts untilled simply for want of population, and the competition is not of tenants for land, but of landlords for tenants. The increase of railway communication will, no doubt, in course of time, affect this state of things; but it may be doubted whether the aversion of the agricultural classes to leave their abodes will be, for many years to come, modified in any appreciable degree.

10. *Increase of population.*—The population, notwithstanding a high normal mortality and occasional severe epidemics, shows a steady increase The 62 millions of inhabitants in 1872 had grown into 69½ millions in 1881, an increase more than 10 per cent. in nine years. This rate will, no doubt, tend to rather increase than diminish. The absolute peace, the increased power of counteracting the mortality of famines which canals and railways afford, the larger extent to which several of the other great causes of mortality are being brought within control, all tend in the direction of higher ratio of increase. On the other hand, not only are there few of the prudential checks or habits which in some countries tend to arrest the growth of an agricultural population, but the social customs and religious belief of large classes necessitate early marriages, and so encourage reproduction at an age scarcely beyond childhood. The entire female population is married before the 20th year, and more than 10 per cent. before the 10th year. The same causes conduce to the habit of the entire family living on, if possible, on the holding, and in the ancestral dwelling-house, and to the common enjoyment of the holding by all the members

11.—*Increasing severity of the struggle for life.*—Life, there is good reason to believe, is gradually becoming a harder struggle to large classes of the community. Prices have increased, and are increasing. The price of rice has doubled in the course of the last century: that of wheat has increased in a still higher ratio. At Patna two independent sets of statistics established the result that the price of rice has risen within the last 15 years between 21 and 23 per-cent. This state of things suggests increased wealth to those who have produce to sell, increased difficulty of life to those who have to buy. The existence of some pressure is favoured by a calculation made by Sir E Baring when Financial Member of Council, viz. that the crop yield of Bengal bears a lower proportion to the population than that of any part of India, except the North-Western Provinces and Oudh, viz Rs. 15-9 per head as against Rs. 21 per head in the Central Provinces, Rs. 22-4 per head in Bombay, Rs. 19 per head in Madras, and Rs. 18-5 per head in the Punjab. Making all allowance for the considerations that would modify this estimate (as, *e.g.*, that the crop may not mean the entire agricultural outcome, and that there are non-agricultural sources of wealth), the fact does still tend in the direction of proving that there is less agricultural wealth in Bengal than elsewhere, and that the pressure on the soil is greater.

12. *Different interests in the soil. First that of the State.*—Such being the main economic conditions of the province, we have next to consider the mode in which the proprietors and possessors' interests in the soil are distributed. The first interest is that of the Government, which by the immemorial and unquestioned law of India, is entitled, as the Ruling Power, to a definite portion of the profits of the soil. Considerable changes have, since the declaration of the Permanent Settlement in 1793, from various causes, taken place both in the amount of revenue and the size and number of estates. Many of the large zemindaries were broken up in the years immediately succeeding that declaration, owing to the failure of the zemindars to pay the Government demand. From the same cause a considerable number of estates have subsequently reverted to Government. Another increase in the land revenue has arisen from the transfer to the Government of certain police duties, to which, under the Permanent Settlement, the zemindars were liable. Escheats and the resumption of invalid rent-free tenures have still further enlarged the Government revenue roll. In 1882-83 the revenue of those portions of the Province, in which the Permanent Settlement was originally carried out, stood at Rs. 3,62,00,000.

13. *Owners of estates. Land revenue of Bengal.*—The owners of the 110,456 estates in Bengal Proper and Behar, by whom the largest portion of this revenue is paid, are classified as follows :—

97,695 small estates under 500 acres. | 12,304 estates from 500 to 20,000 acres.
457 estates above 20,000 acres.

In other words, less than ½ per cent. are large properties of over 20,000 acres, 11 per cent. range between 500 and 20,000 acres, and 88½ per cent are petty properties of less than 500 acres. Among the large estates are some of the size of a small principality ; one estate, for instance, in Chumparun consists of 1,187,000 acres, more than half the revenue-paying land of the district. It is noticeable that in Behar (the Patna Division and Bhagulpore the tendency to sub-division has of late years been very pronounced. The 25,800 estates in the Patna Division of 1862 had grown into 49,000 in 1882. A large increase has also taken place in Bhagulpore. Of the entire number of estates, no less than 2,706, with a revenue of nearly twenty lakhs, are the exclusive property of Government. Of these, some are under the direct management of Government, some are let out on farming leases. Besides these, the Government has under direct management various estates owing to the recusancy of the owners. Altogether there were in 1882-83, 1,061 estates, with a revenue of 26 lakhs, under direct Government control.

14. *Rental of Bengal, 17 millions sterling.*—The 3½ millions of revenue thus paid to Government is, of course, but a fraction of the entire payments made from the soil. In Bengal there are no agricultural statistics, and nothing accurate is known of the area or crops. The area under cultivation, however, has been estimated at about 54 or 55 millions of acres, of which 48 millions may be regarded as under food-crops, and six or seven millions under non-food-crops. The Famine Commission, estimating the average yield to be 11 bushels per acre, the food-crop to be worth £5 per ton, and the non-food acreage at £3 per acre, estimated the crop outcome at 103 millions sterling. In addition to this, there would be the outcome of dairies, gardens, forests, &c., which might perhaps be taken at one-third of the crop value, or, say, 30 millions. The Government* estimate the average yield of rice at 12 to 15 maunds (984 to 1,230lb) of raw grain, or 10 or 12 maunds of husked rice per acre—a somewhat larger outturn than the figures available to the Famine Commission appeared to justify. Assuming the average outcome to be half a ton (1,120lb per acre), this would give a gross outturn of 27 millions of tons, worth, at £5 per ton, 135 millions sterling. Out of this a population of 70 millions has to be supported, the land to be sown for the next year's crop, and the export trade, now very considerable, to be maintained, and the rent to be paid. Assuming the food of 70 millions to exhaust 50,000 tons per diem, this would account for 18 millions of tons in the course of the year, leaving only 9 millions of tons for all the other purposes specified. Suppose these 9 millions of tons to be worth 45 millions sterling, and the expenses of agriculture, the wear and tear of life, clothing and luxuries, and wastage to cost 6*s.* 8*d.* per head of the population, this would account for 23 millions sterling, leaving a margin of 22 millions for rent.

* Administration Report for 1882-83, page 4

* All estimates as to the agricultural outcome are, in the present defective condition of statistics in Bengal, to a large extent conjectural. The estimate above given is, however, not without corroboration. We have some figures which are more or less trustworthy as to the actual rental. The rental of the landlords in almost the whole of Bengal, as calculated from the first Road Cess Statistics nearly 10 years ago, was between 13 and 14 millions sterling. The valuations were, in many instances, defective ; and re-valuations, now in progress, but not yet complete, indicate that the amount paid to landlords of one sort or another in Bengal does not, at any rate, fall short of 17 millions sterling. There is good reason to believe that the actual payment, direct and indirect, by the occupants of the soil is considerably in excess of this sum. Some authorities have estimated it as high as 25 or 30 millions sterling.

15. *Effect on the Public Revenue.*—The effect of this state of things on the public revenue is, of course, very marked. Sir E. Baring calculated that, whereas in a completely ryotwari province such as Bombay, 88 per cent. of the total payment made from the land finds its way to the treasury ; and in a province where four-fifths are ryotwari, such as Madras, 69 per cent, in Bengal only one-third of the payments from the soil reaches the State. The figures given above appear to show that

this calculation fell far short of the truth, and that the rent-receiving class in Bengal pays only about one-sixth of its receipts by way of revenue to the State. This result would not, of course, justify the repudiation of the terms of the Permanent Settlement; but it is sometimes urged on behalf of the landowners of Bengal that their zealous and generous exertions have earned the gratitude of the State, and constitute a claim to exceptional treatment. To such pleas *ad miseri cordiam*, a pertinent reply is supplied by the fact that, as matters now stand, they receive five-sixths of the net outcome of the soil for doing nothing or next to nothing; while the Government receives one-sixth for all the expenses of administration, defence, maintenance of order, detection and punishment of crime, and general development. Under this last head attention should be called to the fact that more than a million of acres have been protected from famine and enormously increased in value by canal irrigation, and that the Province has now more than 1,900 miles of railway completed, besides a large number of schemes under construction. These improvements have, to a very large extent, been effected out of public resources towards which the land-owners have contributed nothing but the 3½ millions of revenue. Of late years they are liable for half of the local cesses, or, say, 18 lakhs, though cases not unfrequently come up which show that the practice is for the tenant to pay his landlord's moiety as well as his own. Besides the East Indian and East Bengal lines, which have now been purchased by the State, 4½ millions sterling had, up to the close of 1882-83, been laid out on 670 miles of State Railways, and 6 millions had been spent on 640 miles of canals affording irrigation to 1,200,000 acres, at the expense of the general revenues of the country or the Province. The net result of these canals, which, unquestionably, have largely increased the land-owner's rental, is an annual charge to the Province of 21 lakhs. There is a debit against the railways of nearly 30 millions for guaranteed interest, incurred in the earlier years of railway enterprise, to which the Bengal lines have contributed an appreciable share. This has been paid by the general tax-payer.

16. *Position of the land-owning class.*—The position of the land-owning interest in Bengal, accordingly, is that the rental has risen from something between £300,000 and £400,000 (which it is estimated to have been at the time of the Permanent Settlement) to something over 17 millions sterling; that a large portion of this increase is due to the maintenance of peace and public order and the general prosperity of the Empire, and especially to the rise in the value of agricultural produce produced by increased facilities for trade—roads, railways, canals,—towards which improvements the zemindars must be deemed to have contributed nothing, because the yearly revenue fixed at the Permanent Settlement must be regarded as their contribution—a very inadequate one—towards the cost of the general expenses of the Empire and Province, irrespective of these undertakings. If, therefore, the State finds it necessary to exercise the power—which, under the Permanent Settlement, it is admitted by all to possess,—of interfering between landlord and tenant for the protection of the latter; and if this interference involves some restriction of the landlord's immediate profits, it may tend to allay the alarm, indignation and sympathy occasioned by the process if it is remembered that we are dealing with a class whose income has increased from causes to which it has but in a very small degree contributed, so as to be more than fifty times as large as it was when it was first settled by Government. It may also be serviceable, for the same purpose, to recall the undoubted historical fact that, whatever may have been the privileges accorded by the Mahomedan Conqueror to the Bengal zemindars during the century and a half of efficient Mogul rule, those privileges at all times rested on the precarious tenure of the pleasure of an absolute Sovereign, and were subject to the unquestioned right of the Ruling Power to demand whatever portion of the proceeds of the soil it pleased. For the last quarter of a century previous to the accession of the British, this absolute power had been used in the most violent, rapacious and oppressive manner by a series of Viceroys, with whom plunder was the chief and almost sole function of government. The landowners were among the most conspicuous sufferers, and Warren Hastings' summary procedure fell far short of the precedents established by his predecessors. At the time of the Permanent Settlement, whatever claims to hereditary succession the zemindar may have established, his position was much more that of the official of an arbitrary Government than of a land-owner in the English sense of the word. His remuneration was the one-tenth of the revenue which it was his business to collect for the State: he was liable to fine, imprisonment, even corporal punishment. He could not enchance or eject. His duty was to "conciliate and encourage the ryots." This duty, in the disturbed years of the expiring Mogul Empire, he very imperfectly performed, as the British speedily discovered. In 1769 the President of Bengal appointed a commission for the purpose of ascertaining and fixing the amount which the zemindar received from the ryot "as his income or emolument." The Regulation of that year declared that "he had taken advantage of his position, had imposed illegal taxes, and had thus extended his claim and availed himself of opportunities to lay his hands *on the revenues of Government and the property of the ryot*, where he had no foundation of right or colour of pretence." This "property of the ryot," the Regulation announced, the Government intended to protect from further invasion. Nor was this view lost sight of in subsequent legislation. In 1790 Lord Cornwallis pointed out that, while the zemindar's claim to a certain percentage of the rents of their estates had been admitted, *the right of Government to fix the amount of those rents at its own discretion had never been denied or disputed*;" and that, as zemindars had in

Minute, 3rd February 1790. Sections 61-63.

numberless cases been dismissed for non-compliance with Government requirements, "*a more nugatory or delusive species of property could hardly exist.*" The view taken by the author of the Permanent Settlement was re-asserted 30 years later by the Board of Directors in the well-known passage of their despatch of 15th June 1819, pointing out the injurious consequences which had arisen to individual rights "from describing those, with whom the *Permanent Settlement was made as the actual proprietors of the land,*" and the payments by the ryots as rent instead of revenue—inaccuracies which, the Board said, had "introduced confusion into the whole system of tenures, and given a specious colour to the pretensions of the zemindar's in acting as if they were, in the ordinary sense of the word, proprietors, and as if the ryots had no permanent interest in the soil but what they derived from them." One practical proof of the narrow limits within which the zemindar's proprietary rights could be exercised is that by Regulations of 1793, 1795 and 1803 he was prohibited from granting a lease for more than 10 years, and no lease was valid till it had been submitted to, and approved by, the revenue authorities. It is, of course, notorious that the view taken by some authorities of the zemindars' position placed their proprietary rights somewhat higher, and that particular phrases may be adduced in which their views found official expression. But the general tenor alike of the Regulations, the despatches of the Government and the Directors, and the Minutes in which Lord Cornwallis and other Indian Statesmen recorded their views is, to my mind, quite incontestably in favour of the view, recorded by Lord Moira in 1819, that the Permanent Settlement was "founded on the principle that the ryot's payments were to be regarded, not as the mere payment of rent to an absolute proprietor, but an assessment payable to intermediate managers, possessing an hereditary and transferable property in the incidence of their management."

17. *Tenure-holders.*—Under the proprietors come a large class of intermediate landlords, or tenure-holders, estimated to be more than a million in number. In the majority of instances their income is a very small one. One return gives 620,000 of them as having a rental of less than £10 per annum. This class exemplifies the strong tendency in Bengal of the possessor of any interest in land to sub-let it rather than himself engage in the risks and costs of agriculture. It constitutes a structure built up by a sort of process of subinfeudation, the possessor of the interest in each instance letting it out to some subordinate holder, who, in turn, lets it to another; this process of sub-letting being repeated often two, three, or four, and in some instances as many as thirteen times.

18. *Ryots.*—Under the 150,000 proprietors' estates in Bengal, and 1,000,000 tenure-holders, come 10 millions of holders who are, or are supposed to be, in actual occupation of the soil. The great majority of them, no doubt are so. Of the 10 millions, 9 millions pay less than Rs. 20 per annum, and of these 9 millions more than 6 pay less than Rs 5—a rental which may be taken to represent a holding of about 2 acres. There are, however, 25,000 ryots whose rental is over Rs. 100, and 120,000 whose rental is between Rs. 50 and Rs. 100. Among them are many who sub-let. In some instances there are ryots who hold many thousands of acres, and are really considerable landlords. At any rate, the tendency which has been at work in the classes above them is also here at work; and the "sub-ryots" constitute a class already numerous and certain to increase, and more in need of protection, probably, than any other.

19. *Occupancy ryots.*—A large proportion of the ryots, estimated at from 70 to 90 per cent., are in enjoyment of certain privileges, as to fixity of tenure and limitation of rent, which vary in some particulars in different parts of the province, but which are known generally as "occupancy rights." The exact process by which these rights came into existence is a matter of dispute. There is no dispute that many of them are the representatives of the "khudkhast kadimi," or self-cultivating ryots, whose rights were so carefully provided for at the time of the Permanent Settlement. Another portion has acquired these rights by the rule introduced by Act X of 1859, which conferred occupancy rights in land as the result of 12 years' continuous residence as a ryot upon it. Other rights have grown up by local custom, which in some places allows of a still more rapid growth of occupancy right. There is a fierce controversy as to whether the privileges accorded at the Permanent Settlement were intended for all resident tenants, or only for a recognized class already in occupation. This will be considered hereafter; at present the fact with which we have to deal is that—partly from historical causes, partly from the natural desire to secure a tenant, partly from kindliness or indifference of landlords—a proportion estimated at from seven-tenths to nine-tenths of the ryots are in the enjoyment of privileges, amounting in some instances to absolute fixity of tenure at a given rent, in others to a rental enhanceable only on certain specified grounds: in all, to a right to remain on the soil, so long as the rent is paid; that these rights, originally not transferable, have become so by local custom in many, if not most, parts of Bengal, but not in Behar; that they descend from the father to the sons in like manner as other immoveable property; and that there is a generally recognized practice of sub letting ryoti holdings.

20. *Condition of agricultural class in Behar.*—When we come to examine the condition of the population with more particularity, we find a very pronounced difference between the two provinces concerned. In Behar agrarian troubles have, on several occasions, brought the condition of the agricultural classes in that province under the consideration of the Government.

In 1866-67 disturbances rose in connection with the indigo cultivation in Tirhoot and Chumparun; the Commissioner of the Division reported that oppression and extortion were frequently practised on the ryots, and though it was resolved not to resort, at the moment, to

legislation, Lord Lawrence, then Governor-General, recorded his conviction that a law was required which would protect the ryot both from planters and zemindárs. "I believe," he said—

"that it will be necessary for the Government, sooner or later, to interfere, and to pass a law which shall thoroughly protect the ryot and make him, what he is now only in name, a free man, a cultivator with the right to cultivate the land he holds, provided he pays a fair rent for it."

The subject was again brought under consideration in 1873, and in 1875 the Commissioner of the Division, writing of the prevalent scarcity, observed that there had been, during 17 years, five occasions, besides the present one, when a crop-failure, in some parts of the country, notwithstanding an excellent harvest in others, had resulted in the starvation of a certain part of the population. His explanation was that "not only is the cultivator left with an area barely sufficient to raise the food he requires for his family, but in time of drought he is short of food, as the yield is below his requirements." The same result was established by an official enquiry held in the following year. The cause of the inability of the Behar peasant to bear up against any vicissitude of season was, the Commissioners reported, that he had not, and could not by any possibility have, any reserve on which to fall back.

"The whole conditions of agricultural industry then are such as to render it precarious. There is no sufficient certainty as to tenure. It is impossible for the population to fall back this year solely on accumulated reserves, whether of grain, of property, of money or credit. For the whole conditions of life are such as to preclude any sufficient accumulation of the kind. The ryots cannot fall back on any credit fund like the tenant-right in other parts of Bengal, for, practically, there is no such right available to offer in pledge. The people who plough and sow, and who ought to reap, have not a reasonable assurance as to the fruits of their industry."

21. *Views of Sir A. Eden and the Famine Commission as to Behar ryot.*—In 1877 Sir A. Eden again brought to the notice of Government the general and widespread prevalence of oppressive, lawless, and high-handed practices, and proposed a project of legislation on the cultivators' behalf. Further discussion and enquiry established the gravity and the extent of the illegalities and oppressions which had reduced the Behar peasantry to their low condition; and the Famine Commission, with whom the condition of Behar was naturally a topic of earnest consideration, concurred with all the other authorities in holding that the great need of the province was a law which should enable the ryot to hold his land subject to fixed conditions of tenure, to maintain his occupancy rights when acquired, to be certified of the amount of his rent, and to have a trustworthy record of payments, and to be able to resist illegal distraint, illegal cesses, and illegal enhancement.

22. *General concurrence of opinion as to necessity of legislation in Behar.*—The opinion expressed by Lord Lawrence in 1866 was justified by report presented in 1879 by a Committee which had been appointed the previous year for special enquiry into the subject. They reported that it was necessary to recast the entire law; and as this Report coincided with that of the Select Committee, who had charge of the Rent Bill for Bengal, that the time had come for general legislation, the whole subject was referred to the Rent Commission, whose labours ultimately resulted in the first draft of the Bill now under consideration. The conclusion, therefore, upon which legislation is now proceeding is one which having been enunciated by the Viceroy 16 years ago, has been again and again, since then, arrived at by officials who had especial means of judging of the condition of the Province. The accounts are all to the same effect. "It is manifest," the Government of India writes of the Patna Division, "that the majority of the ryots in that large tract of country (23,000 square miles) are rack-rented." The mass of the tenantry are paying now, so the Collector of Patna reported, rents which have doubled within the last 16 years. The great evil complained of by the local officials is arbitrary enhancement at the will of the landlord. The rents of the Patna district are higher than those of any district in Bengal; those of Durbhunga and Sarun higher than any districts, except Hooghly and Burdwan, and in the Gya, Shahabad and Mozufferpore districts exceptionally high. Chumparun is the only district of the division in which the rents are not abnormal—a result to which its large amount of waste land has probably contributed.

23. *Destruction of occupancy rights.*—A further aggravation of the evil plight of the Behar tenantry is that rights of occupancy, which were at one time, if not universal, at any rate of very general prevalence, are being just obliterated. The following is the account given by the Government of India to the Secretary of State of this branch of the subject:—

Despatch, 21st March 1882, section 53.

"In Behar it is said that not one quarter per cent. of the raiyats hold pottahs; and an examination of the *jamabandi* papers (rent-rolls) of Behar estates has shown that, while 60 per cent. of the present raiyats have held some land in the villages in which they reside for more than twelve years, less than one per cent. of them hold at present the same area of land which they held twelve years ago. Inasmuch as these raiyats hold no *pottahs* or other documents showing which are the particular fields which they have held for more than twelve years, and which fields were subsequently acquired, it is doubtful whether any of them could, under the existing law, prove their occupancy rights even where these rights exist beyond all doubt.' 'The Collector of Patna reports that, whenever the zemindar has felt himself strong enough to break occupancy holdings, he has done so, and that the landlords are very active in shifting the tenants from time to time to prevent the acquisition of occupancy rights. The zemindars of Shahabad, at a meeting held on 30th October 1880 at Arrah, deprecated the concession to resident raiyats of rights of occupancy of lands held by them for three years. 'At present,' the zemindars said, 'landowners prevent the growth of occupancy rights by granting leases for five years only or by changing the lands, or by managing so that a raiyat shall never hold at the same rent for twelve years. In practice, the last expedient is found sufficient, as the Courts find claims to occupancy rights not proved, unless the raiyat can show that he held the same land for twelve years by proving that he paid the

same rent. Under the proposed law, the zemindars would not suffer raiyats to remain for three years.' 'Interchange of lands,' observes the Officiating Collector of Sarun, Mr. MacDonnell, 'between raiyats in a zemindari occasionally occurs, but is the rare exception, not the rule. Manipulation by the *patwaris* of the village *jamabandis* to prevent identification of the plot held this year with the same plot held five years ago, is of usual occurrence to prevent proof of continuous holding, and to furnish evidence of the contrary, as well as of a change in the rates. The Maharajah of Durbhunga informed Mr. Reynolds that his present practice was to give leases for ten years, and if the raiyat showed himself a good tenant, to renew his lease, and allow him to acquire a right of occupancy; but that if the term were reduced to three years, he would be obliged to eject all his tenants at the end of two years, so as to bar the acquisition of the right."

24. *Effect of enhancements on the tenantry.*—As to the results of these enhancements and other oppressive proceedings on the condition of the people, there is, unhappily, no room for doubt. The evidence laid before the Commission established a decree of general destitution for which it would be difficult to find any parallel in India; certainly not in any locality equally favoured by nature. "The ryots of this Province," wrote Major Hidayat Khan, an important landowner in Behar in 1877, "though they labour hard, are yet in a state of almost utter destitution, and that owing to the heavy assessments laid upon them." Good evidence was given of the exaction of numerous illegal cesses by the landlords, of the enhancement of rents not legally liable to enhancement, of illegal ejectments and of duress and other illegal methods of enforcing payment of rent. Illegal distraint was so universal that its illegality had begun to be lost sight of. The conclusion at which the Famine Commission, on the evidence before it, arrived was that the Behar ryot's chronic state was one of abject poverty, close bordering on absolute destitution; that he was, as a rule, rack-rented; that his occupancy rights were being fast destroyed; that he was the victim of much illegality and oppression; and that the condition of the rent law was a very grave hindrance to agricultural prosperity. Exactly to the same effect was Mr Reynolds' report. "The Behar ryot," he said, "is at once industrious and unthrifty; for he knows that it is his destiny to labour, and he feels that it would be useless for him to attempt to save. Accustomed to a low standard of living, he has no thought of improving his condition, because, hitherto, the circumstances of his lot have made permanent improvement impossible to him His best hope has been that the zemindar and the mahajun would leave him a bare sufficiency to support life till his next harvest time comes round"

25. *Necessity for protective measures.*—We have of late had a succession of prosperous years, and the ryot may have shared in the general prosperity. The judicious arrangements made by Sir A. Eden with the planters and the praiseworthy endeavours of the planters themselves, have, I believe, put a stop to many objectionable and oppressive practices. But this was the condition of the province when legislation was taken in hand, and it would be too much to hope that the seven intervening years have worked so substantial a change in the economic condition of the province as to render legislation unnecessary. We must still, I fear, regard the Behar ryot as among those classes whom the Government is, in the language of the Permanent Settlement, especially bound to protect as being the most helpless and most defenceless.

26. *Tenantry in East Bengal.*—On the other side of the Province we are confronted by a very different state of things. There a robust and determined class of tenants, mostly Mohammedans, have taken full advantage of every opportunity for bettering their position, and, in many cases, resisting the legitimate claims of the landlords. The development of the jute industry has diffused wealth; large tracts of waste land have been acquired on favourable terms; in numerous instances the ryots have purchased "perpetual leases," *i.e.*, the proprietorship of the land subject to a fixed quit-rent. Attempts at exaction have been answered by acts of violence, and the public peace has been, on several occasions, infringed by agrarian disturbance. In 1873 the oppressive manner in which the purchasers of an old zemindari exercised their right as landlords gave rise to an outbreak, which almost assumed the form of an agrarian league "to hold the rent." The famine of 1874 made it necessary to postpone any systematic attempt at dealing with the case; but from that time to this the Government has almost continuously had the unsatisfactory relations of the landlord and tenant in the Eastern districts under consideration, the general complaint of the landlords being the indefiniteness in which the law has left, at once, their rights and the procedure for enforcing them, and the practicable impossibility of enforcing payments the legality and propriety of which not even the recalcitrant tenant pretended to dispute At present the state of things in many parts of the country is scarcely more than a sort of truce, pending the settlement of the dispute by legislation. The disputes in Mymensingh may be regarded as a type of the sort of antagonism which generally prevails, and which might, at any moment, lead to a serious breach of the public tranquillity.

27. *Hostile relations of Landlord and Tenant in Mymensingh.*—The papers recently published* throw a vivid light on the friction produced by the hostile relations of zemindar and ryot in that district. The present is the third occasion, the Government observes, in answer to a memorial of landowners praying for special coercive measures, "that enhancements of rents have driven the ryots into open hostility against their landlords."

* *Calcutta Gazette*, 15th October 1884.

On two previous occasions, 1868 and 1875, official action was brought to bear upon the raiyats, who were persuaded under such influence to agree to their zemindars' terms. "*Since then,*" says the Commissioner, "*the zemindars have been increasing their demands for kabuliyats at enhanced rates, and there has been more or less friction. This culminated in 1882, when the raiyats again, for the third time, combined together and resisted the zemindars. This time the combination has assumed a more serious aspect than on the other occasions, probably because the raiyats are becoming more and more aware of their rights, and are*

determined not to be persuaded to anything against their interests by the local officials. They are perhaps not so much to blame, for I fear it must be recorded that the Maimansingh pargana zemindars, relying on the support formerly given to them by the officials, have been very exacting in their demands, and though I am not prepared to say that the kabuliyats got out of the raiyats are wholly illegal and unjust, yet it must be allowed that very hard bargains have been driven with the raiyats." This is the opinion of a Commissioner who has had a very long experience of this part of Bengal, and it is more than borne out by the following remarks of the Collector of the district:—

"A review of the history of the policy of the zemindars towards their raiyats in the Maimansingh pargana shows that, so far as this portion of the Lower Provinces is concerned, there might almost as well have existed no rent-law at all since 1859, for the provisions of that and subsequent Acts passed by the Legislature for the regulation of the relations between landlord and tenant seem to have been entirely ignored. Rents have been capriciously enhanced from time to time, and the objectionable system of farming out portions of the estate to the highest bidder seems to have been the rule. When the raiyats during so many years, quietly submitted to such a state of things, it is an obvious deduction that this, could only have occurred among a peasantry incredibly and entirely ignorant that they had any rights at all, or that the rent demandable from them by their landlord could be limited by anything but his will. This probably is to be ascribed to the remoteness of the district and its consequent backwardness. The zemindars, while obliged to admit that this has in fact been the result of their management of their estates, plead that, it having been always the custom of the pargana to revise the rent-roll at short intervals, they were perfectly justified, notwithstanding the provisions of the Rent Acts, in preserving the *status quo ante* 1859, and trying to prevent the accrual of rights of occupancy. They also state that the raiyats, for their own interest and quite voluntarily, used frequently to change the lands they held by surrendering some and cultivating others. Where a raiyat believed that he was liable to summary ejectment after a short term in the event of his not consenting to the term of a resettlement, it became of course of little moment to him what land he held or what land he surrendered, his great object being to hold the best lands he could at the least rates. Even at present, so far as I have been able to ascertain, there exists a most complete and incredible ignorance among these raiyats of the provisions, of the rent-law—a state exposing them, on the one hand, to being deprived of their legal rights without knowing it, and on the other hand being duped by designing persons into absurd and impossible ideas as regards what the Government may do for them by the new Bill."

It would be difficult, it appears to me, to conceive a state of things more imperatively calling for legislation. The landlords naturally demand that the law shall not remain a dead-letter as regards the assertion of their claims, and that it shall be modified, if necessary, so as to render the collection of rent more cheap, easy and expeditious that at present. This demand the Government has met by the various Bills which have been for several years past under discussion, and the various official investigations to which the discussion of those Bills have given rise The result has been in Bengal, as in Behar, that a general revision of the law has been found to be essential.

28. *Condition of both parts of the Province necessitates interference.*—Neither of the two conditions described above can be regarded as sufficiently tolerable to justify the Government in continued acquiescence. The tenant in East Bengal cannot be allowed to go on defying the law, defending himself against his landlord, whether the claim be legal or illegal, by such rude justice as he chooses to apply. The British Government cannot allow two great classes to stand confronted, the one daring the other to enforce rights which the courts have ascertained. The landlord is entitled to have his decree for rent executed; but the Government, which executes it, is surely bound to see that that decree is not unjust or oppressive. On the other hand, the state of things in Behar and portions of Bengal is such as to give rise to the gravest anxiety for the future. Society there seems to have reached, or be fast reaching, the stage described by Mr. Mill, where he says, speaking of Ireland and India—"As the land is a fixed quantity, while population has an unlimited power of increase, unless something checks that increase, the competition for land soon forces up the rent to the highest point consistent with keeping the population alive. The effects, therefore, of a cottier system depend on the extent to which the capacity of the population to increase is controlled either by custom, individual prudence, or by starvation and disease." We have seen that custom, far from checking the increase, in India tends to foster it; that religion enjoins it: that the circumstances of the Behar peasant render prudence impossible. There remains only the other stern remedy for the redundant population competing unrestrictedly for the soil—disease and starvation; and in Behar we have, in my opinion, that terrible remedy already in sight. The enquiries which, for some years, were conducted by the Famine Commission left this conviction, with painful distinctness, on the minds of other members, I know, besides myself; and when people talk, *coeur leger*, about the prosperity and progress of India, the rights of landlords, the hardship of any interference with those rights, and other like topics, the answer seems to me to ask what is to be the future of this teeming, helpless population, and how can Government, with the facts before it, repudiate, the obligation, so solemnly enacted at the Permanent Settlement, and so often admitted since of interfering, whenever necessary, on behalf of the agricultural tenant.

29. *Necessity for due consideration of interests of each class.*—Any measure, accordingly, which attempts to regulate the subject, must deal with the interests of (1) the 110,000 registered owners; (2) the 1,000,000 tenure-holders; (3) the occupancy ryot, himself often a landlord; (4) the non-occupancy ryot; (5) the ryot's tenant or sub-ryot. As the rights of each of these classes are in almost every instance, in some respect or other, indistinct, vague and undetermined; as local custom has varied them in a hundred different particulars; and as the vast majority of the persons concerned are unacquainted with writing, and attach more importance to tradition and local sentiment than to any document, however formal in its terms or solemnly executed, it is no matter of surprise that those who entered upon the present controversy, with decided views and strong predispositions, and prejudices, have found plenty of material for strengthening their opinions as the discussion proceeded,

and that there should have been on either side much warm feeling and exaggerated, inaccurate and violent language. The task for the legislator is to consider all these conflicting views with absolute dispassionateness, and to devise the plan by which, with least shock to society, least eruption of existing relations, least loss or pain to any class, the general interests of the community may be most effectually promoted.

30. *Proprietary rights must be reconciled with public weal.*—On the one hand, it must be remembered, as to the proprietors and tenureholders, that "the sacredness of property" is a State axiom of the deepest import; that any interference with existing rights of property by the State is a most serious and dangerous order of remedy, never to be resorted to without the gravest cause or beyond the limit at which it becomes unnecessary. On the other hand, it is necessary to insist, as a fundamental axiom of political economy, and of our policy as the ruling power, on the right and duty of the State to interfere with property whenever the well-being of any class in the community demands interference. It is not too much, I suppose, to say that in all the chief European communities—notably Russia, France, Austria, Germany—it has been found necessary to interfere, to a most serious extent, with rights of the land-owning classes, which, though resting on unquestionably good legal and historical basis, had become incompatible with the modern conditions of society. In Ireland the same remedy has been found necessary. In England the diversion of a great portion of the population to manufacture, and the relief afforded by the development of other industries than agriculture, has rendered the relations of the owner and occupier of the soil a matter of less national importance than elsewhere; but even in England, Parliament has considered it expedient to interfere in some particulars with the free right of contract between the owner of land and its occupant. All the great political economists have justified such interference.

31. *Statutory right and duty of State to interfere.*—In India, moreover, there is this special circumstance, that the right and duty of the State to interfere, its determination to interfere whenever expedient, and the obligation of the landowners to acquiesce in such interference without attempting to make it a ground for abatement of the payments due by them to the State, are doctrines which have been solemnly and repeatedly enacted as part of the Statute law of the country, and which form part of the title-deeds of every landowner in India. The Permanent Settlement Regulation was framed on instructions from the Court of Directors to this effect:—

"In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced * * * * * You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere from time to time, as it may be necessary, for the protection of the ryots and subordinate landlords, it being our intention in the whole of this measure effectually to limit our own demands, but not to depart from our inherent right, as sovereign, of being the guardians and protectors of every class of persons living under our Government."

These instructions were carried out by the Government in Article 8 of Regulation I of 1793, which is as follows:—

"To prevent any misconstruction of the foregoing articles" (fixing the Government revenue for ever) "the Governor-General in Council thinks it necessary to make the following declarations to the zemindars, independent talukdars, and other actual proprietors of lands:—*First*, it being the duty of the ruling power to protect *all classes of people, and more particularly those who, from their situation, are most helpless*, the Governor General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent taluqdars, raiyats *and other cultivators of the soil*; and no zemindar, independent taluqdar, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."

To the like effect was rule 9 in the kabuliyat, by which section 67 of Regulation VIII of 1793 declared that proprietors should be bound, viz. that "implicit obedience should be shown to all regulations which have been, or may be, prescribed by Government concerning the rents of the ryots, and the collections from under-tenants and agents of every description, as well as from all other persons whatever."

It is difficult to understand how, with these explicit and emphatic expressions before them, there should be some advocates of the zemindars' interests who appeal to the Permanent Settlement as the foundation of the right on the part of the landlords to hold their estates free from legislative interference, and "to make what they can" out of the non-occupancy tenants, and who denounce any proposed restriction of this right as a wholly unjustifiable interference with the rights of private property, and even a breach of faith.

32. *Different theories of the State's right to interfere.*—The difficulty is met in different ways. Some writers get over it by denying the constitutional right of Government to interfere at all with the owners of the soil in the matter of rent. "I unhesitatingly assert," writes the author of a pamphlet entitled, by way, I suppose, of announcing its impartiality, calmness and freedom from class-feeling, The Ilbert Bill No. II, "that there never was a time when the zemindar could not make what terms he pleased with his ryots, and that the pergunnah rates, or the established rates of which we hear so much, were the rates which the zemindar himself established." The learned author had no doubt satisfied himself as to the sufficiency of the grounds on which this unhesitating assertion is based; but I find it irreconcileable with the language alike of Lord Cornwallis, the Board of Directors and contemporaneous legislation,—with Lord Cornwallis' statement that, while the zemindars' "claim to a percentage upon the rents of their estates had been admitted, *the right of the Government to fix the amount of those rents at its own discretion had never been denied or disputed*,"

or with the language in which the Board gave its sanction to Lord Cornwallis' arrangements:—"We expressly reserve the right," they wrote, "which belongs to us as sovereigns of interposing our authority in making from time to time all such regulations as may be necessary to *prevent ryots being improperly disturbed in their possessions*, or loaded with unwarrantable exactions . . . Our interference, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government under which it appeared to be a general maxim that the immediate cultivator of the soil paying his rent should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, *and that it was not left to the arbitrary determination of the zemindars. In point of fact, the original amount seems to have been annually ascertained and fixed by the Sovereign.*"

33. *A pergunnah rate was in some cases actually fixed.*—The most conclusive refutation, however, of the assertion is afforded by a despatch of the Court of Directors to the Government of India, 15th June 1819, in which the causes of the omission of the authorities to interfere for the purpose of enforcing a pergunnah rate were discussed. "We conclude," they say, "that the supposed difficulty of the operation was the cause of this non-interference. We find, however, that antecedently to the Permanent Settlement, the power was successfully exercised in several parts of the territory under your Government, and that the advantages of this policy are still felt in those districts, although the general system of your administration has been unfavourable to the preservation and improvement of the advantages thus obtained. We particularly refer to the 24-Pergunnahs, and to part of Dinagepore, when it was under the management of the late Mr. Hatch. In the vicinity of Calcutta also the ryots, as Mr. Colebrook understood, have been supported by the decision of the Adalut in their pretensions to hold their lands upon the rents payable by them, or those whose representatives they are, according to the *best (last?) general measurement which was undertaken by the authority of Government before the Permanent Settlement*, and of which the record is understood to be preserved in the office of the Collector."

The Directors go on to quote Mr. Colebrook's statement that "the Regulations of Benares have maintained the tables of rates of Fasli 1817, and that the canoongoe office yet exists in that province for its preservation." Recurring to Dinagepore, the Directors mention that Mr. Hatch had ascertained, by local investigation, the varieties of rate and pottah, the proportion borne by the illegal cesses to the recorded rental, the quality of various classes of soil, the average gross produce, and "5thly, *that he determined, reference being had to the present and former rates of rent, what proportion of the average produce should, in each class, be retained by the ryot, and what proportion of a fixed money valuation should be received by the zemindar.*" The pergunnah rate thus determined by Mr. Hatch in 1790 is reported by an officer well acquainted with the district to be still held in "universal respect" The same thing is the case, I am informed, in Jessore.

It is needless to add that the whole series of Regulations, which constitute the Permanent Settlement, proceed on the basis that the Government had the right to restrict the rents to a certain specified rate, and was exercising that right in the most explicit manner.

34. *Compensation to land-owners for restrictive legislation.*—Another view put forward by the same writer is that, though the Regulation does empower the Government to interfere whenever it thinks necessary, for the protection of the ryots and other cultivators of the soil, such interference must be accompanied by adequate compensation to those whose interests it may curtail. To this contention there are several answers. In the first place, it is in direct contravention of the Regulation, which expressly provides that "no zemindar, independent talookdar or other actual proprietor of land shall be entitled on this account (*i.e.*, on account of interference by the State for the protection of the ryot) to make any objection to the discharge of the fixed assessment which thay have respectively agreed to pay." In the next place, such compensation would be merely, in another form, to lessen the contribution of the land-owners of Bengal to the general revenues, a contribution at present extremely disproportionate to that which every other class pays for the public defence, administration and development of the country. In the third place, any scheme of compensation, short of completely buying out the whole of the landlords' interest in the soil, would be impracticable; and lastly, those who advocate the present reforms do not admit that they are in the long run, and, even in many instances, at the present moment, to the detriment of the landlord. It is for the real interest of the landowner, just as much as of the Government, to have a prosperous, contented and substantial tenantry. Many instances of excellent landlords show the extent to which this fact is realized in Bengal. The object of the present measure is to generalize, as far as possible, the mutual advantages to landlord and tenant of such a state of things, and to guard against the departures from it which negligence or greed on the one hand, and lawless impatience of a just claim on the other, are likely to produce. Such a reform does not call for or admit of compensation to any particular class.

35. *Did the protection of the Permanent Settlement extend to non-occupancy ryot?*—Another, and more plausible, contention is that, whatever be the position of the occupancy ryot, the privileges and protection provided by the Regulation did not extend to the non-occupancy ryots. With these, at any rate, it is urged, the landlords were left free to deal "in whatever manner they thought proper." Arguments have been adduced with great acumen and research on either side of this question. I do not propose to recapitulate those arguments. What was the exact position of the pykast ryot—whether he was more favoured or less favoured than the occupancy ryot—how far any district line between

pykast and khudkast ryots was, in practice, drawn, the general object being to induce the non-resident ryot to settle, and the non-resident ryot having always at hand the easy remedy of migration to the next estate—are points, as every one who has followed the controversy knows, on which those who have studied the subject with most care are unable to agree; they must be left, I suppose, as unascertainable. There is evidence, however, that the non-resident ryot could not be forced, any more than the occupancy ryot, to pay more than the pergunnah rate, and that he was exempt from arbitrary eviction; and it has been contended, not without forcible grounds, that the only practical difference between the two classes was that the auction-purchaser of the estate was able to cancel the lease in the one case and not in the other. The doubt existed in 1819, when we find the Court of Directors writing to the Government that they were not satisfied as to the nature of the interest possessed by the landlords in the waste lands of permanently-settled districts, and adding, with reference to the view expressed by the Government, that "it is the opinion of many considerable authorities that in leases of waste, as well as of other lands, the pergunnah rates form a standard of payment not to be exceeded." The doubt which existed in 1819 is little likely to be cleared up after the lapse of more than half a century; but we shall see immediately what was the view, taken by the Legislature in 1859, of the law of the country as to each class of ryot. The Government of India, with a view to keep clear of debateable ground, bases its proposed legislation, not on the historical question as to the precise legal limits of the zemindars' powers, but on the necessity of finding "a thorough remedy for a practical evil. We aim at a determination of the case which shall be broadly just to interests which must at some point conflict." The right and duty of Government to apply such a remedy in both classes of ryots cannot reasonably be contested. Its denial would involve the monstrous assumption that the Government, while making the most solemn annoucements of its care for every class of tenant, and its resolution to interfere for their protection whenever necessary, and placing the assurance of the ryot's position on the same legal basis as that of the zemindars, arbitrarily excluded from the scope of this beneficent arrangement all the tenantry not then in the enjoyment of occupancy rights, and all the future tenantry of the portion (believed to be between one-third and two-thirds) of the province which was at that time unreclaimed. The mere statement of such a result seems to demonstrate the unsoundness of the assumption which involves it.

Despatch of 21st March 1882. Section 61.

36. *Previous legislation.*—To complete the sketch of the facts of the case, it is necessary to refer to the legislation which has taken place upon it. Of these measures, it is necessary only to consider Act X of 1859. I have shown, in paragraph 3, what was Lord Canning's view of that Act, viz. that it was an earnest attempt to improve the position of the Bengal ryot and to give him a prospect of freedom and independence by clearly defining his rights and placing restrictions on the power of the zemindars, which ought, long ago, to have been provided Its original object was to amend the law as to one particular—the recovery of rent; but it was thought expedient, as the mover of the Bill explained, "to re-enact in a distinct and clear form the provisions of the existing law connected with land rents; and sections 3, 4, and 5 accordingly set forth *what had been the law since the time of the* Permanent Settlement." Section 3 provided that hereditary ryots at fixed rates were entitled to pottahs at those rates; "*all other ryots and cultivators" were entitled to pottahs at the rates established in the pergunnah for similar lands, or if no rent rate could be discovered, at the customary rates for similar l nds in the vicinity.* Section 4 provided that every resident ryot and cultivator has a right of occupancy, except in the case (1) of sir lands leased for a term, and (2) of sub-ryots. Section 5 provided that *resident ryots cultivating lands not previously in their possession, without a pottah, should not acquire a right of occupancy till they had paid rent for three years.* This is what the mover of the Bill considered to be a statement of the law in force since the time of the Permanent Settlement. What can we infer from it but that the "resident ryot," as opposed to the ryot with a right of occupancy, has certain definite rights, and that the right of occupancy was one to which a short residence, viz. of three years, gave rise. The causes which gave rise to modifications in the Bill as passed are well known. The Committee reported that the pergunnah rates, at which ryots were entitled to hold, were admitted to mean customary and fair rents;" and with regard to the ryot with a right of occupancy, that it had been pointed out that "residence is not always a condition of occupancy," and that, as 12 years had in 1856 been prescribed in the North-Western Provinces as giving rise to a right of occupancy, they had, following this precedent, prescribed the same period in the Act

37. *Unexpected results of Act X of* 1859.—The consequences of this rule were little foreseen by its framers. The admitted law was that all resident ryots had rights of occupancy; but it was found that some non-resident ryots had such rights, and it was proposed to meet these cases by a rule borrowed from the North-Western Provinces that an ousted tenant could recover possession by showing 12 years' occupation. It is matter of history how this provision came to be understood, not as supplementary rule, but as an exclusive definition—how, consequently, many undoubtedly resident ryots were ousted on account of their inability to prove 12 years' continuous occupation—and how, in the language of the Lieutenant-Governor, speaking of the Act a few years subsequently, its results had been "wholesale enhancement of rents and ejectment of ryots, who had a customary claim to occupancy, and who, under the law as it previously stood, would probably never have been molested." This view of the unexpected effects of Act X of 1859 has been repeatedly put forward; it was prominently enforced

by the Rent Commission; it was adopted by the Government in its despatch in March 1882; and I am not aware that any one has ever contested its accuracy. But if it be accurate, what becomes of the protests, lamentations and objurgations showered so plentifully on the proposal of Government to amend a law which, owing to technical defects, has miscarried in so signal and fundamental a manner, and which pr duces results the very opposite of those which its authors had in view? The Bill started with the view that all resident ryots had rights of occupancy, that all other ryots were entitled to sit at the settled pergunnah rates, and that rights of occupancy could be acquired by those who had them not by three years, residence. The effect of the Act, as interpreted in our Courts, has been that a ryot, who, and his ancestors for 100 years before him, have resided in the village, may find himself ejected from his holding because he may have been shifted from one plot to another, or may, from some other cause, be unable to prove 12 years' continuous occupation. How can any Government, with any pretentions to a consistent policy, refuse to remedy such a legislative miscarriage.

38. *Provisions of the Bill.*—Such, in general terms, is the problem which the present Bill is intended to solve; such are the different interests which it has to consider and adjust; and such the policy by which legislation must be guided. We will now see what solution in each case is proposed.

The Bill recognizes and maintains the existing divisions of those interested in the soil into proprietors, tenure-holders, occupancy ryots (at fixed rents and at enhanceable rents), non-occupancy ryots, and sub-ryots. In order to understand the effect of the proposed legislation it is necessary to examine with minuteness its provisions as to each class, and to see in what respects they differ from the law as it was laid down in 1859 and has been for the last 25 years, and from that which was in force previous to that enactment.

39. *Tenure-holders.*—And first as to the tenure-holders, in which term is included every interest between the proprietor and the ryot, and, presumably, the tenant of every holding over 100 bigahs (or 33 acres) who sub-lets any portion of it.

Section 5 (5).

The Bill provides that, if a tenure-holder has held, otherwise than as a tenant-at-will or for a term of years, at a rent which has not been changed for 20 years immediately preceding the suit, he is presumed to have held from the Permanent Settlement; and if he has held from the Permanent Settlement, his rent can be enhanced only on proof, either (1) that the landlord is entitled to enhance by the conditions of the tenure or local custom; or (2) that the tenant has, by receiving a reduction of rent (other than on account of diluvion or the acquisition of the land for public purposes), rendered himself liable to enhancement, and that the tenant is capable of affording it. His rent may also be increased or diminished on the ground of an increase or diminution of the area for which rent has been previously paid. When a tenure-holder's rent is enhanceable, the enhancement will be governed, in the first instance, by any contract between the parties; in the absence of contract, the enhancement may be to the limit of the customary rate payable by similar tenure-holders in the vicinity; or, where there is no such customary rate, to such limit as the Court thinks "fair and equitable;" but in deciding what is "fair and equitable" the Court is to leave the tenure-holder with not less than 10 per cent. of the net collections, and is to take into account the circumstances under which the tenure was created, the improvements effected by the tenure-holder or his predecessors, and the cost and risk of collection. The enhanced rent must not be more than double the previous rent, and cannot be re-enhanced for 10 years. The enhancement may, if the Court directs, be extended over a period of five years.

Section 6 and section 64.

Section 66.

Section 7.

Section 8.

Section 10.

Section 9.

A permanent tenure is transferable and may be revised as other immoveable property, except that the holding cannot be broken up without the consent of the landlord. A tenure-holder can be ejected only in execution of decree grounded on breach of a condition, consistent with the provisions of the Act, which, by the terms of the contract, renders him liable to ejectment; and no such suit can be entertained unless the landlord has requested the tenant, if the breach is remediable, to remedy it; if it cannot be remedied, to pay reasonable compensation. the Court, in decreeing ejectment, shall fix a time within which the breach may be remedied or a reasonable compensation be paid, in which case no ejectment will take place. Only on default of the tenure-holder to comply with this order ejectment will follow.

Section 11.

Section 97.

Section 98.

Section 12.

Section 170.

40. *Effect of sale for arrears on subordinate holdings: protected interests.*—When a transferable tenure is sold in execution of a decree for arrears of rent, the purchaser will take, subject to certain interests which are termed "protected," viz. (*a*) an under-tenure which has existed since the Permanent Settlement; (*b*) an under-tenure recognized in current settlement proceedings as a tenure at rent fixed for the term of the settlement; (*c*) a lease of land on which buildings have been erected, or gardens, orchards, &c., made; (*d*) a right of occupancy; (*e*) a right conferred on an occupancy tenant to hold at a fair rent; (*f*) any right or interest which the landlord, at whose instance the holding is sold, has expressly, in writing, authorized the tenant to create.

Section 175.

41. "*Registered and notified incumbrances.*"—As to all other subordinate interests in, or incumbrances upon, the tenure sold for arrears of rent, they will, if registered and notified to the landlord three months before the accrual of the arrear, be termed "registered and notified incumbrances;" and the tenure will, in the first instance, be sold subject to them; and only if the sum bid is insufficient to discharge the arrear will they be sold with power to the purchaser to annul. The purchaser can in such case, by application to the Collector within a year, annul.

Section 180.

42. *Proposed system of registration.*—There are various other provisions in the Bill affecting tenure-holders along with other classes of tenants which need not at present be considered. It is important, however, to notice that the Government anticipates an improvement in the law, VII of 1876, as to registration of title. By this no tenure-holder would be able to sue for rent, unless both his own title and his landlord's is registered. If this were the law, and a complete system of registration were effected under it, it would be possible to provide for the recovery of rent by a landlord from a tenure-holder by summary process, similar to that now in force in the case of the tenures known as "putni talooks." This would no doubt prove of great advantage to the landlords, and, in fact, is one of the substantial advantages which the Bill proposes to confer upon them. On the other hand, there can be little doubt that a complete system of registration would be of first rate importance in the interests of the ryots.

43. *Twenty years' presumption.*—The first point which has to be discussed in connection with the status of the tenure-holder, as thus defined, is whether the 20 years' presumption should still be retained as raising an inference that the rent has not been altered over the Permanent Settlement, and consequently is exempt from enhancement, except in the specified cases.

This rule was enacted in 1859, and has been in force ever since. Strong reasons, and those not of a mere speculative order, must be shown for any change. The reasons urged for its repeal are— 1 that it is an infringement of the rights of the landlord under the Permanent Settlement; and (2) that it works hardship to auction-purchasers at sales for arrears of revenue

The first of these grounds can hardly be seriously put forward in favour of the repeal of an enactment passed 25 years ago, which, having been in use ever since. must be thoroughly familiar to all parties concerned, and as to the practical advantages of which the mass of official opinion appears to be on the whole agreed.

As to the auction-purchasers, as, out of the 147,942 estates in Bengal with a revenue of 3¾ crores, only 647 with an average revenue of 1½ lakhs are annually sold for arrears, the grievance cannot, at any rate, be one of very serious extent.

44. *Proposal of Bengal Government.*—The Lieutenant-Governor of Bengal, however, is prepared to meet the landlord's wishes by restricting the presumption, for the future, to cases in which it is shown that there has been no change in the rent from 20 years previous to the passing of the Bill. I confess that, though I am glad of any reasonable concession to the landlords, I do not see any adequate ground for this change in the law as it has now stood for 25 years. The presumption may have worked hardly at first; but it seems difficult to conceive how it should do so now. If a landlord chooses, in defiance of the directions of the Legislature, to keep his accounts in such a way as to be unable to show a change, if change there has been in the course of twenty years preceding the suit, he ought, I think, to meet the presumption which the law for the last quarter of a century attached to that state of things; and, surely, if there has, as a fact, been no change for 20 years, it is but reasonable, regard being had to the respective resources of the two parties, that the burthen should be thrown on the landlord of showing that a rent has at some prior date been altered. The balance of local official opinion appears to be decidedly against any change. Alterations in presumptions are always objectionable, and the necessity for alteration grows less every year of their continuance. No such necessity, it appears to me, exists in the present instance.

45. *Enhancement.*—Next comes the question of the restrictions placed by the Bill on enhancement of the tenure-holder's rent. As to the interval of time which must intervene between one enhancement and another, it is suggested that the period of exemption from re-enhancement should be 15 years, so as to correspond to that prescribed in the case of an occupancy ryot. This very reasonable proposal is supported by the Lieutenant-Governor, and is hardly likely to encounter serious opposition.

As to the limit in amount, the Bengal Government recommends a section providing that the proposed limit of 100 per cent. on the existing rental shall not apply in cases in which land has been let at a low rate for purposes of reclamation. At present contracts for the reclamation of waste land are, by section 212, exempted from the Act. This section, it is suggested, should be amended so as to apply specifically to the present case.

46. *The Ryot.*—Coming, next, to the much larger class of ryots, and to the much more difficult and more disputable questions involved in the consideration of their interests, we are met at the outset by the additional difficulty that, while the landlord's interest is united in opposing any proposal which tends to enlarge the amount of the area of protection afforded to the occupancy ryot, those who are most anxious to provide for the ryot's protection are not in accordance as to the limits to which the enlargement should go, or the conditions under which the privilege should accrue. The existing law, enacted in 1859, makes the acquisition of occupancy rights depend on the continuous occupation of the land, as a ryot, for 12 years.

47. *Proposals of Rent Commission and Sir A. Eden.*—The Rent Commission proposed to retain this rule, but to guard against its failure in future, as it has failed in the past, by imposing a penalty on eviction. Sir A. Eden proposed to describe a ryot, who resided for three years in a village or group of villages, as having "a fixed habitation" therein, and to give rights of occupancy over any land held by a ryot in, or within two miles of, a village in which he had "a fixed habitation."

48. *Proposals of Government of India and Secretary of State.*—The Government of India* recommended a more extensive change. They proposed to take a classification of lands as the basis of a recognition of occupancy right, and to declare that, except in certain specified cases, the right should attach to the occupancy by a right of "ryoti" lands. This proposal was disapproved by the Secretary of State,† *first*, as annulling the familiar distinction between resident and non-resident ryots; *secondly*, as departing from a rule recognized ever since 1859; and *thirdly*, because the failure of the law had, in the opinion of the Secretary of State, arisen from an error, not in the principle of the Act, but in the provisions for its application. This error, it was observed, enabled a landlord to defeat the accrual of rights to the ryot, notwithstanding continuous residence, either by shifting him from one field to another, or by inducing him to enter into a contract barring the right, or by destroying evidence of continuous possession. The Secretary of State accordingly recommended that the "resident" ryot should be one who had occupied land "in the village or estate" for 12 years, and that such ryots should have occupancy rights in the land they occupy and pay rent for.

* 21st March 1881.

† 17th August 1882.

49. *Reply of Government of India.*—The Government of India, in reply, pointed out various objections to the Secretary of State's proposal, taking, as the basis of their argument, the distinction between permanent and temporary occupation, and the fact that by the historical law of India, wherever land was permanently cultivated, the tenant held at customary rates, and should not be ejected so long as those rates were paid. They pointed out that the rule proposed by the Secretary of State must tend to a continual increase in the number of unprotected ryots, as occupancy holdings gradually fell in; that it involved a continuance of the evil conflict between landlord and tenant which it was one object of the Bill to end; that it left the unprotected ryot worse off than before, because it would make it necessary for the landlord, in order to prevent the accrual of occupancy rights, to turn him, not only out of his lands, but out of the village or estate; that its result must necessarily be to lead landlords not to allow resident ryots to acquire fresh lands, but to prefer outsiders, whose position they would be free to dictate at pleasure, and to seize every opportunity of getting rid of the occupancy tenant altogether, and thus to perpetuate antagonism and litigation.

17th October 1882.

50. *Adoption by Government of India of Secretary of State's proposal for definition of "ryot."*—The Secretary of State then left the matter to the Government of India, to decide at its own discretion. The Government of India declined to legislate on a basis which had not the concurrence of the Secretary of State, and determined to act on the lines indicated by the Secretary of State. The result has been the definition of the occupancy ryot's status as given in the Bill. It proceeds on the basis of the view taken by the Secretary of State, that Act X of 1859 had failed, not from defect of principle (the principle being that the permanent cultivator should have occupancy rights), but because it was so worded as to make the accrual of the right depend, not on permanence of cultivation, but on the continuous occupation of the particular plot over which the right was claimed. This defect the Secretary of State proposed to remedy by making residence *in the village or estate* the condition of acquiring the status of a "settled ryot," and by giving the settled ryot occupancy rights. This the Bill does, *totidem verbis*, and so far, if the present controversy is ever to close, we must, I presume, regard the matter as concluded. But the Bill goes on to add an important presumption, viz that every ryot holding land shall be presumed, as between him and the landlord under whom he holds, to have held the land, or part of it, for 12 years, and thus to have become a "settled ryot" in the village or estate in which the land is situate. To this presumption, as well as to extension of the ryot's rights to the whole of the estate in which he is settled, strenuous objection is taken.

11th January 1880.

22nd August, paragraph 10.

51. *Objections taken to the definition.*—As to the latter of these objections, it is pointed out by the Government of Bengal that there is an inconsistency in allowing the ryot rights in his village and not in the whole estate, because, if the ryot is to have occupancy rights in his own village, he will, perforce, in many cases, have them in different estates, inasmuch as portions of one village often lie in several estates. It is further urged that the extension of the right to the "estate" is very little likely to occasion hardship to the landlord, inasmuch as the greater majority of the ryots are in the humblest circumstances, "barely able to keep body and soul together," and not at all in a position to extend their holdings; that the tenant can acquire new land only by the consent of the landlord, and that if he does acquire it, it is desirable on public grounds that his position should be assured as to the new acquisition no less than as to the rest of his holding.

52. *Meaning of "The Estate."*—There is considerable conflict of opinion as to what the "estate" is to be, in which the settled ryot is to have occupancy rights, whether the estate as it stood in 1853, all subsequent partitions being disregarded, or some latter date. The Government of Bengal is prepared to agree that the estate shall be that which exists at the

passing of the Act. This would greatly narrow the area which the right of occupancy, grounded on the presumption, would affect. As the proposal stands, it does seem a somewhat remarkable result that a right, arising out of a presumption raised by the mere fact of residence in a village, should, as between the tenant and the owner of that village, operate not only in the estate in which the village is situate, but in the whole of an area which, from 1853, may have constituted two or three perfectly different estates from that in which the occupancy is claimed. If the Bengal Government's proposal is accepted, occupancy right, to which the presumption, while unrebutted, gives rise, will be confined to an area which, at the passing of the Bill, constituted a single estate.

53. *Presumption arising from holding land as a ryot.*—The presumption that a person, who holds land as a ryot, has held it, or some part of it, for 12 years, has been greatly misunderstood. It has been taken as meaning that the mere fact of holding a plot of land is to throw, not only upon the landlord of that particular holding, but upon the owner of any other land in the estate, of which the ryot is in possession, the burthen of proving that the ryot has not for 12 continuous years occupied land in any portion of the estate in which the land is situate, or in any estate of which the estate in question formed a part in 1853. No such extravagant proposal is contained in the section. The presumption applies merely to the land of which the tenant is in occupation, and it operates merely as between him and the landlord of whom he holds. The removal of this misapprehension gets rid of one main objection which has been taken to the section. The proposal simply is that a ryot, holding land, shall, as between him and his landlord, be presumed to have held it or some part for 12 years as a ryot. The justice and propriety of this presumption depend on the principles which govern all presumptions. One of these is that the fact or state of things presumed shall be one of much more general and probable occurrence, in the ordinary course of human affairs, than the fact or state of things presumed against. Another is that the burthen of proving a fact is thrown on the person to whom the means of proof are more available than to the other party in the dispute. Applying these principles, the Select Committee and the Government of Bengal concur in regarding the present presumption as no more than a recognition of existing facts; and their opinion appears to be justified by the opinion, which, I believe, had the sanction of the late Hon'ble Kristodas Pal, that 90 per cent. of the Bengal ryots are now in the enjoyment of occupancy rights. No one puts the proportion of occupancy ryots at less than 70 per cent.; and this being so, there would seem to be reason, so far, for presuming that what in at least seven-tenths of the cases is admitted to be the fact.

54. *Burthen of proof thrown on party best supplied with means of proof.*—As to the question of means of proof, there can be little doubt that the landlord, as a rule, is in far better position to prove any fact about a holding on his estate than the tenant. The landlord has his office, his records and books, his accountants. There are besides the public registers, made up on returns which he is bound by law to make. On the other hand, there is an ignorant peasant, with nothing, at the best, but a few scraps of paper, which he cannot read, by way of documentary proof. If there ever was a case in which the burthen of proof may justly be thrown on the stronger and better-equipped party to a dispute, this would seem to be one.

55. *Concurrence of opinion as to position of occupancy ryot.*—On the whole, the definition and the presumption appear to me to be justified by the history of the case, and by the conclusions at which the Secretary of State and the Government of India have, after an elaborate enquiry, and with all the facts before them, arrived. All parties are agreed that there is a very large class of tenantry in the enjoyment of certain privileges which tend greatly to their prosperity, and so to the well-being of the State. The consolidation of those privileges, and the extension of the area to which they should extend, was one of the chief desiderata recommended by the Famine Commission. The same view has been taken by Sir A. Eden, the present Lieutenant-Governor, the Government of India, and the Secretary of State. It must now be regarded as the acknowledged and deliberately adopted policy of the British Government in India. This being so, how is this policy to be better enforced and these ends to be more effectually attained than by such an expedient as the one in question, which adopts the rule which has been in force for the last 25 years, gives to that rule the effect which the framers of the Act of 1859, in the opinion of the Secretary of State, intended it to have, and supports by a presumption, which the facts of the case are shown fully to justify? There are, no doubt, inconveniences in the definition as it at present stands. One of these is that a landlord would be unable to let a field temporarily to a "settled" ryot without his acquiring an occupancy right in it; and, again, that a person who acquires by purchase an occupancy right would seem thereby to acquire occupancy rights in all lands held by him in the estate. Another result pointed out by Field, J., is that a non-occupancy ryot, who subsequently inherited a fractional share of a single cotta, would, under sub-section (4), become an occupancy tenant of his original holding, despite a contract to the contrary. Another is that, as sub-sections 4 and 5 stand, there might be ryots with some fractional share in the father's occupancy holding, who could not live on it, but still could not hire land in any part of the estate without acquiring an occupancy right in it. But it would, I think, be possible in Committee to devise some provision to counteract these and like inconveniences; and, on the whole, if it is determined to abandon the plan, proposed by the Government of India, of conferring a right of occupancy on the tenant of "ryoti" land, whoever he may be, it is difficult to see what better general definition of the occupancy ryot can be given.

56 *Incidents of the occupancy holding: Transferability.*—We next come to the incidents of the occupancy right. As to these, the most important difference of opinion is as to transferability. This is a very old controversy, and the evils incidental to transferability on the one side and non-transferability on the other have been exhaustively discussed. It is admitted that the occupancy ryot of the Permanent Settlement, had no right to transfer, nor was the right recognized by Act X of 1859. On the other hand, there is a marked tendency of usage in the direction of transferability, and the Rent Commission reported that the occupancy rights are freely transferred in every district of Bengal, except Sarun and Chumparun. The statistics given in the appendix to the Bengal Report, to a large extent confirm this statement. The registered transfers occupancy holdings in 1883-84 were as follows:—

		Number of transfers.	Area in bighas.	Rental.
				Rs.
Occupancy holdings at fixed rates	...	20,000	125,000	1,97,000
Ditto not at fixed rates	...	47,000	313,000	3,25,000

The purchase-money was 18¾ lakhs in the one case and 32 lakhs in the other, the average area being in both cases about 6·7 bighas. During the same period occupancy holdings at fixed rates, of the aggregate amount of 333,000 bighas, were sold in execution of decree for Rs. 3,41,000, and other occupancy holdings aggregating 374,000 bighas were sold for 4 lakhs. This gives over a million bighas transferred in the year, and appears to show that in many parts of Bengal, at any rate, the sale of occupancy rights has grown into a recognized custom, especially as, among the registered sales. a large number were to be landlord of the selling ryot or to other landlords. In 42,000 cases the sale was to other ryots, and in less than 10,000 to mahajuns.

57. *Proposal of the Lieutenant-Governor.*—Altogether the figures appear to warrant the conclusion arrived at by the Bengal Government that in Bengal Proper, as opposed to Behar, the practice of transferring has become too generally recognized in practice to be ignored in legislation, and also that the belief that the right of transfer leads necessarily to the land passing wholesale into the hands of mahajuns has no very solid foundation. The Lieutenant-Governor proposes to substitute for the right of pre-emption given to landlords by the Bill (which all parties agree in considering unworkable) a provision giving the landlord the right of vetoing any sale made to other that a cultivating occupant. This would enable the landlord to exclude the mahajun as a holder, and at the same time place as small a restriction as possible on the ryot's power of turning his interest in the land to the best account.

In Behar, where the practice of transfer can hardly be said to exist (only about 6,000 acres having been transferred in 1883 out of an area of 13½ millions of acres), it is proposed that the matter should be left to be regulated by local custom. The effect of this proposal will be to leave matters as they are in those parts of the country in which the custom of transfer has not yet been established; but to give legislative recognition to it in those parts in which custom is shown to be generally prevalent, at the same time assuring the landlord with an important power of veto, which he does not appear to possess at present.

58. *Consequences of introduction of right of transfer.*—This proposal certainly cannot be regarded as revolutionary, and it is in general accordance with the recommendation, which, after mature consideration, the Famine Commission offered as the best practicable solution of this difficult question. Whichever course is adopted, *some* evil results will certainly ensue. On the one hand, the denial of the right of transfer admittedly lowers the value of the occupancy rights, and any restriction on it, so far, impairs its usefulness. Where it is now exercised, it would seem a harsh measure to prohibit its exercise. On the other hand, the right of transfer necessarily facilitates the acquisition of land to money-lenders and other non-agriculturists; and its introduction, where it is still unknown, leads inevitably to the wasteful employment by improvident ryots of new-found means of raising or borrowing money. In such a district, for instance, as the Sonthal Pergunnahs, the recognition of the power of sale would, no doubt, work badly in enabling a rude and improvident population to dispossess themselves of their lands in favour of a money-lending class. The report for 1883-84 of the Sonthal Pergunnahs mentions facts which appear to indicate the desirability of not forcing the extension of the power, by premature legislation, on the less advanced portions of the province.

Calcutta Gazette for 23rd July.

59. *Suggested modification of the Lieutenant-Governor's proposal.*—It may be necessary to adopt the Lieutenant-Governor's proposal as a compromise between conflicting views; and the opponents of the right of transfer will think the compromise much better than nothing. It is certainly preferable to the proposal to give the landlord a right of pre-emption, which is open to numerous objections, and is generally condemned. There is, however, much to be said in favour of allowing such transfers to be made only to *bonâ fide* cultivators. As Mr. Justice Field observes, it is difficult to see "the expediency of taking away any portion of the zemindar's proprietary right in order to confer it on another class, which consists of mere receivers of rent and does not create capital by the application of labour to the soil" I should be disposed to place the veto with the Collector instead of the zemindar, whose assent would always be purchaseable by a salami and not without one. The parties should, in every case but certain specified exceptions, disability, &c, be obliged to satisfy the Collector that the purchaser was a *bonâ fide* cultivator, who himself intended personally to cultivate the plot. Without a certificate from the

Collector to this effect, no sale should be registered. This would no doubt narrow the area of purchasers and occasion delay; but these results would not be without their solid advantages. The right of transfer is an unhealthy growth upon the occupancy right, and by no means to be encouraged.

60. *Other restrictions on right of transfer.*—Supposing His Honor's proposal to be adopted, the landlord would still retain the right of pre-emption at an auction sale under section 33, and is right, under section 34, to foreclose in case of a mortgage decree. It is not clear, however, as the Bill now stands, what would be the position of a landlord who had thus foreclosed. The ryot will not, under section 97, be able to sell a part of his holding without his landlord's consent; and (except in certain specified cases) he can make a gift of it only by registered deed. For this the Lieutenant-Governor would substitute a provision limiting gifts of the occupancy right to the donor's family, and, in that case, doing away altogether with the landlord's right of pre-emption.

Section 33.
Section 34.

Section 97.

61. *Sub-letting.*—Another much disputed incident of the occupancy right is the power to sub-let. The Bill deals with this by providing, in section 37, that a ryot who sub-lets more than half his holding may (except in certain cases of disability to cultivate), on registration as tenure-holder, be converted into a tenure-holder, though he will still remain liable to enhancement as a ryot. The most important effect of this would be to elevate his sub-ryots to the status of ryots capable of acquiring occupancy rights. Another result would be that, in case of the holding being put up for sale in execution of a decree for rent, the property would, in the first instance, be sold subject to existing incumbrances. This section is condemned by official opinion as unworkable, and is abandoned by the Bengal Government. In lieu of this the Lieutenant-Governor proposes, by way of protection to the sub-ryot, to abandon section 62 of the present Bill, and to restore section 119 of the original Bill, which limited the money-rent payable by a sub-tenant to five-sixteenths of the gross value of the produce. Section 62, which limits the sub-ryot's rent to a sum not exceeding the lessor's own rent by 50 per cent. where the lease is under a registered deed, and 25 per cent. in any other case, is discarded as calculated to produce hardship in some cases (of which the guzastadars of Shahabad are given as an instance), and as certain to be evaded in practice. The protection afforded to the sub-tenant is the least satisfactory portion of the Bill; and if the sub-ryot is to get any real advantage under the Bill, some better means for securing him from oppression and extreme competition must be devised. For my own part I am unable to see why the sub-ryot should not, as against the ryot, enjoy the same privileges, and acquire rights corresponding with those, which the ryot enjoys or acquires against his landlord. This point, however, will be discussed hereafter under the heading "sub-ryot."

Another restriction of sub-letting by the ryot provided by the Bill is that the lease shall not, except in certain cases of disability, hold good for more than seven years. It does not seem to me clear how the provision would operate, whether to the advantage of the ryot or sub-tenant, or what the object of it is.

62 *Enhancement by contract.*—The next point is the occupancy ryot's liability to enhancement. The Bill provides for this by recognizing enhancement of a money rent – first, within certain limits, by contract between the parties; and secondly, by decree of court on certain specified grounds As to the first of these modes of enhancement, the conditions prescribed are—(*a*) that the contract must be registered; (*b*) that the enhancement shall not be more than 25 per cent on the existing rental; (*c*) that the contract must be for a period of at least seven years, and if the enhancement is more than one-eighth, for 15 years; and (*d*) that the registering officer must, before registering, ascertain the legality of the contract and the competence, willingness, &c., of the ryot.

63. *Objections of Bengal Government*—These provisions are objected to on opposite grounds by the two parties to the present controversy. On the one hand, it is urged that there is nothing to justify the Legislature in interfering with the freedom of contract between landlord and ryot; and that as the amount of enhancement permitted in cases of contract is less than that obtainable by suit, there is a distinct premium on litigation. On the other hand, the Bengal Government views with apprehension the sanction which the Bill will give to enhancements, which it considers would be fatal to the tenantry if realized in practice. It regards, too, with distrust the so-called "amicable arrangements" which are arrived at between landlord and tenants without the intervention of the court. It fears that the maximum laid down by the Act will become the standard up to which landlords, as a rule, will endeavour to force their rental. The limit of 100 per cent. to the enhancement of a tenure-holder's rent in section 8, the limit of 25 per cent. in the present section, and the same limit in the case of an enhancement on account of a rise in prices, seem to the Lieutenant-Governor "excessive." The rents in Behar, he says, are already, on unimpeachable evidence, too high. An enhancement of 25 per cent. every 15 years will quadruple the rent in less than a century—a rate of increase which might well be regarded with apprehension. In face of the alarming increase which has taken place in Behar, the Bengal Government presses for the imposition of an ultimate check on enhancement in the form of a provision that in no case shall the rent be more than ⅓th of the gross produce of the staple food-crops. The Lieutenant-Governor thinks that there are no insuperable difficulties in the way of ascertaining the gross outcome, and regards the proposed restriction as the only adequate barrier against a tendency to higher rents, which must ultimately impoverish the ryot. The restriction proposed by the Lieutenant-Governor has this in its favour, that the rate of 20 per cent. is that which the

landlords of Eastern Bengal, in a memorial presented in 1876, suggested as a proper maximum. One of their prayers was that, "in cases in which there was any doubt as to what the competitive rent was, a ratio 20 per cent. or one-fifth of the money value of the gross produce of the land (taking an average of three years) be declared as the rent to be decreed." Besides imposing this, Mr. Rivers Thompson would not give legislative sanction to a higher increase, by means of contract, than one-eighth every 15 years. This would double rents in the course of 90 years. In Behar the Lieutenant-Governor would wish the intervals at which enhancement may take place extended to 30 years.

64. *Enhancement by decree of Court.*—As to the second mode of enhancement, the grounds prescribed by the Bill, on which, apart from a registered contract, rent may be enhanced, differ in some particulars from the existing law. Under this the grounds are—(*a*) that the rent is below the prevailing rent for similar holdings; or (*b*) that there has been a rise in prices; or (*c*) an increase in the productiveness of the soil, produced otherwise than at the ryot's expense; or (*d*) that the area which the ryot actually holds is larger than that for which he pays rent. As to the last of these grounds, which is properly treated, not as an enhancement, but as an increase of rent, owing to a rectification of an error as to the area of the holding, there is no dispute.

Act VIII of 1869 (B.C.), section 18.

65. *Enhancement on ground of increased productiveness.*—As to (*c*), the Bill superimposes the condition that the increase of the productiveness of the soil must, except in the case of increase arising from fluvial action, have been at the expense of the landlord. The reasons adduced are—first, that the increase of productiveness from natural causes has proved practically impossible to prove, and the provision, as it stands, is unworkable; and second, that if a change is necessary, it should be in the direction of giving the tenant, and not the landlord, the benefit of any increased productiveness to which the landlord has not contributed. The only causes, apart from landlords' or tenants' improvements, by which productiveness can be increased, are the introduction of canal irrigation or fluvial action. As to the former, it seems to me imperative to make some adequate provision as to the mode in which the increased value of the soil consequent on the introduction of canals is to be divided between landlord and tenant. As the land tax payable by the landlord is fixed, and as the other taxes which he pays are quite inconsiderable, the result is that, to a large extent, the canals are made at other people's expense than at the landowner's. There is no owner's rate, as in some other parts of India, and consequently the entire burthen is thrown upon the occupier. The consequence has been that, in many cases, the immediate consequence of the introduction of canals has been to double or treble the rental, and this rise of rents has been frequently mentioned by the irrigation officers as one great impedient to the progress of canal irrigation.* The occupier finds it better worth his while to go on without canal water than to take it subject to the higher rental which the landlord immediately demands. This subject ought to be expressly provided for.

* Bengal Irrigation Report for 1880-81.

As to enhancement on the ground of increased productiveness owing to fluvial action, the Bengal Government points out that chur or dearah lands, *i.e.*, lands liable to improvement or deterioration by fluvial action, are expressly provided for by section 213, the terms of the lease being left, in such cases, to contract, subject to the acquisition of a right of occupancy by twelve years' continuous occupation, and that lands, which have ceased to be chur lands, ought not to be enhanced on account of an occasional inundation. The Lieutenant-Governor would, accordingly, omit this ground of enhancement. The Bill provides (section 47) that the increase of productiveness, relied on as a ground of enhancement, must not be "temporary or casual," so that the case contemplated must be such a change in the course of a river as to permanently change the character of the soil by inundation, deposit, &c., or by removing its liability to occasional inundation.

Supposing such a change, it is difficult to see why the landlord should not get a portion, at any rate, of the increased value of his land; or why, as provided by section 47, the enhancement should be restricted to 25 per cent. on the previous rental, as well as to a moiety of the net value of the increase. The present law seems juster to the landlord than the Bill. If the value of the soil has increased from causes to which neither landlord nor tenant have contributed, the landlord is surely entitled to a share; and if the occupancy tenant got the benefit of half the increase, he would have no reason to complain.

66. *Enhancement on the ground of landlord's improvements.*—As to enhancement on the ground of increased productiveness caused by the landlord, the Bill requires that the improvement should be registered, and directs regard to be had to the increase likely to be produced by the improvement; to the cost to the tenant of utilizing it; to the existing rent and the resources of the ryot; it also allows the enhancement to be made conditional on its results, and subject to review. There is a further condition provided by section 48, viz., that the enhancement must not be unfair or inequitable. The Bengal Government would further restrict enhancement by providing that in no case should the rent be more than doubled. The doubt would appear to me to be whether all these restrictions will not operate to deter landlords from laying out money in improvements, the fruition of which, in the shape of a higher rental, is circumscribed in so many directions. The matter is not, perhaps, of much practical importance, as it appears not the practice of the Bengal landlords to invest money in improvements.* Still our legislation ought to encourage the landlord to improve. In the present condition of the

Patna Conference. Section 49.

law neither landlord nor tenant seem disposed to do so. "It is a fact," the Bengal Government observes,* "that over large areas in these Provinces, dependant on irrigation for a full crop, a remarkable decline in the number of improvements has taken place in recent times, except where the landlords have been driven by the baoli or metayer system to improve. This fact the Lieutenant-Governor attributes to insecurity of title, and liability to enhancement which prevails. The reclaiming cultivators of earlier times, who cleared the country from the jungle and built the reservoirs and embankments which rendered cultivation possible, have been superseded by farmers, holding under short leases, whose interests are so little bound up with the land or the people that they do not find it even worth while to maintain the works which they found in existence. The more secure the ryot's title, the greater his improvements."

* Report. Section 67.

67. *Enhancement on the ground of a rise in prices.*—As to (*b*), enhancement on the ground of a rise in prices, the Bill provides that a rise in the average prices of staple food-crops, in the locality or at the usual markets, shall be a ground of enhancement. The average price is to be ascertained by comparing the average price-lists, published by Government, of the preceding quinquennium with those of such other quinquennium as the Court thinks equitable. The enhancement must not be more than 25 per cent. on the existing rental; no enhancement is permissible if, under the circumstances, the Court considers it unfair or inequitable; and, subject to these conditions, the enhanced rent shall bear to the former rent the same proportion as the prices of the latter quinquennium to the former.

Section 45.

Section 48.

68. *Ought food-crops alone to be considered?*—Upon this several questions arise. In the first place, ought the prices of the staple *food*-crops alone to be considered? The Lieutenant-Governor thinks that a normal rise of prices, which is the point to be considered, is, on the whole, best ascertained by reference to the general price of food staples. On the other hand, he points out cases in which the rule might work unfairly. Supposing, for instance, that food-grains increased in value, no rise taking place in the price of non-food staples, a ryot, whose crop was non-food, would find himself liable to an enhanced rent without any equivalent increase in his receipts. On the other hand, the converse case would act unjustly on the landlord. It is to be observed that, in the case of cultivators who produce only food enough for their own support, the rise in prices operates against them as affecting the cost of any labour they employ and of anything they have to buy; and, in the case of a cultivator who raises a non-food crop and buys his food, a rise in food-grains, without a corresponding rise in non-food staples, is so much pure loss. On the whole, there seems no sufficient reason for the restriction of the staple crops, by reference to which prices are to be judged, to food-grains. Some officers† advocate the inclusion of non-food crops on the ground that they are less liable to fluctuations than food crops. The simpler and fairer plan would seem to be to provide that the prices of all staple products should be taken into account, leaving to Government to declare in each locality what the staple crops are.

† Patna Conference, s. 25.

69. *Ought increased cost of production to be considered?*—Next comes the question whether, in cases of enhancement on the ground of a rise in prices, the increased cost of production ought to be taken into account. The Bengal Government gives cogent reasons for thinking that it ought. It seems pretty obvious that, if what we are looking to is the increased capacity of the tenant to pay rent, no inference, based on the increased value of his produce, can be sound which does not take into account any increase of the outlay involved in obtaining that produce Such a ground would probably be taken into account, under section 48, in considering whether the enhancement was "in the circumstances fair and equitable." The Lieutenant-Governor recommends that the increased profit derived from the rise in prices should be divided between the landlord and tenant. Thus, supposing a rise of 25 per cent. in prices, he would allow enhancement to the extent of 12½ per cent, and if this were conceded, he would abandon the restriction to 25 per cent. of the former rent now provided by section 45. This would leave the rule pretty much as it now is, viz. that regard must be had to the net value of the produce.

70. *Enhancement on the ground of rent being below the prevailing rate.*—Another ground of enhancement provided by the Bill is that the rent is below the prevailing rate payable by occupancy ryots for similar holdings in the vicinity. The retention of this ground, which exists under the present law, is strongly objected to. Mr. Reynolds mentions it in his dissent from the report as "fraught with serious danger," and as tending, in conjunction with other provisions of the Bill (especially the removal of the restriction on the initial rent demandable from a non-occupancy tenant, and the concession of the power to increase a new occupancy ryot's rent by 25 per cent. on that of the outgoing tenant), "to put into the landlord's hand a powerful engine for enhancing rents up to the maximum amount which the tenant will pay rather than give up the land." The Bengal Government concurs in Mr. Reynolds' disapproval of the retention of this ground of enhancement, which, it says, "is condemned by the weight of authoritative opinion as illogical, unnecessary, and mischievous."* As this was one of the grounds of enhancement formerly enacted by Act X of 1859, and has been recognized ever since, its abandonment needs very clear justification. The Lieutenant-Governor, after mature consideration of the facts, records his conviction that "there can be no longer any doubt that the retention of the prevailing rate as a ground of enhancement is unjust and fraught with the utmost danger to occupancy ryots who form the vast mass of the peasantry in Bengal." The grounds of this opinion appear to be that the idea of a "prevailing rate."

arose from that of the "pergunnah rate," the existence of which, and the possibility of its discovery, all the earlier legislation on the subject assumes; but all recent experience has shown that no such generally prevalent rate can be discovered, nor even (such are the inequalities which from one cause or another have grown up in the same localities) constructed. Assuming, then, that no generally prevalent rate exists, the effect of a rule prescribing reference to such a rate is to provide a vague and shifting standard, which has a constant tendency to rise, according to the eagerness of the landlord to press his interests and the inability of the ryots to defend theirs. As each occupancy holding falls in, or is purchased by the landlord, the landlord will, in the case of non-occupancy ryots, demand whatever rent he pleases; and can claim an initial rent from a new occupancy tenant 25 per cent. in advance of that paid by the old tenant; and he will have, besides, the general powers of enhancement on the grounds already noticed. There will, accordingly, it is urged, be a general tendency to a rise of rentals; and the rule which allows the landlord to enhance occupancy rents with reference to other rentals which have risen in obedience to this tendency "places the rights of the vast body of cultivators at the mercy of the feeblest, the stupidest, the most venal of the class."

The Lieutenant-Governor is prepared to accept, in lieu of the present rule, a provision that enhancement may be allowed wherever the rent is shown to be unduly low with reference to the rates which prevail in the village or estate for occupancy ryots with the same advantages, &c., provided that the rate has been framed and promulgated by Government under the provisions of the Bill (chapter XI) for the framing of a table of rates.

If this suggestion is adopted, it will no doubt have the effect of freeing the reference to the prevailing rate, as a ground of enhancement, from many of the evil consequences now attributed to it, and of rendering landlords much more eager than they would otherwise be likely to be to have a table of rates drawn up. The compromise seems reasonable; and those who, with the Lieutenant-Governor and Mr. Reynolds, view with alarm the tendency to enhanced rents, will, no doubt, gladly accept it as a substantial modification of the existing law in the ryot's favour.

71. *Difficulty occasioned by difference between nominal and actual rental.*—With regard to the entire question of enhancement, we are met, at the outset, with a difficulty of the gravest kind. There is reason to believe that the rent actually paid, or of the payment of which there is any reasonable expectation, differs materially, in most cases, from that shown as due in the zemindars' books. Of this we have a striking instance in the experience of the Court of Wards. The estates which, from one cause or another, come under the management of the Court of Wards, are, it must be supposed, a fair specimen of the generality. The following is the account, given in the Report for 1883-84, in explanation of the fact that, though the arrear due on the 206 estates under the Court's management during the year was 53½ lakhs, and the current demand over 54 lakhs, the actual collections were only 50½ lakhs. "This appearance of bad collections is to be explained by the system on which zemindari accounts are almost invariably kept by private proprietors. While one set of rates is entered as payable in the accounts, another rate is actually paid. The full rent which is entered in the zemindari books may be paid in the most favourable years; but, as a rule, a zemindar is willing to receive and be satisfied with a rental considerably below the amount of the full demand shown as a balance against the ryot, or, in some cases, it is kept alive by instalment-bonds executed by the ryot Almost every estate under the Court of Wards comes under its management, with large unrealizable balances, and it is found that even the current demand is not realizable in spite of all the exertions of the managing establishment. Year after year the percentage of collections from Wards' estates is less than the current demand. The result has generally been considered unsatisfactory; but no other result can be shown without oppressing and harassing the tenantry. It is no exaggeration to say that a fair and liberal zemindar does not collect more than 75 per cent of his nominal rent-roll on an average of years. There is good reason for believing that in some of the eastern districts the average of late years has not exceeded 60 per cent." It is obvious that such a state of things, in which the tenant has always an arrear of rent against him, which it is impossible for him to clear away, while the landlord has a nominal rental which he can at any moment enforce, but which, it is understood, will not be enforced except in some exceptionally prosperous year, or unless the tenant makes himself obnoxious—leaves the tenantry really at the mercy of the landlord, destroys every incentive to improvement and every germ of independence, and may, at any moment, become, in the hands of a grasping or unscrupulous landlord a most potent instrument of oppression. It may not incorrectly be described as the precise antipodes of the position in which it was the object of the Permanent Settlement to place the ryot.

72. *Acquisition of ryots' rights by landlord, and vice versâ.*—One of the most important considerations connected with the status of the occupancy ryot is the effect—(1) of purchase or acquisition by the landlord of the ryot's interest; and (2) of the acquisition by the ryot of the landlord's interest, or of the fact that, during the occupancy, the same person has represented at once the occupying ryot and the landlord, either solely or conjointly with others.

As to (1) it is obvious that, if the landlord is able to buy out the occupancy tenant, and either to hold the land as khamar, or to let it to unprotected tenants, a great facility is afforded for the increase of an unprotected class of tenantry and for the curtailment of the area occupied by settled ryots.

As to the second, where, as is often the case, land belongs to several coparceners, and is held by one of their number as tenant of himself and the rest, there seems to be no reason

why occupancy rights should not accrue; though, I believe, the present law is against the accrual. Sections 28 and 29 deal with this subject, but not very satisfactorily. It is not enough to provide, as section 28 does, that the acquisition by the landlord of an occupancy tenant's rights shall not injuriously affect a third person. What is wanted is a provision that the change shall not have the effect of replacing a protected ryot by a wholly dependent one. It is, besides, by no means desirable to encourage the purchase of ryots' rights by the landlord. I would meet the case by providing that, as against the ryot, the sub-ryot shall have all the rights which the ryot has against his landlord; that if he has resided in the village or estate for 12 years, or otherwise comes within the definition of a "settled ryot," he shall be deemed to have, as against the ryot, and subject to the landlord's rights, occupancy rights; and then, on the sale of the occupancy right, the landlord would merely stand in the ryot's shoes, and the sub-ryots would become his ryots with the same rights against him that they had against the ryot. In the case of no rights having accrued to the sub-ryot, the right of imposing an initial rent and enhancement should be strictly limited to the rates and enhancement permissible in the case of occupancy tenants, so as, in effect, to place the sub-ryot in the position of the occupancy tenant whom he will replace.

As to the second case, I see no reason why the tenant, who has a share in the landlord's interest, and who, with the consent of the co-sharers, has occupied the land as tenant, should not acquire occupancy rights; but where, as in the case of a tenure-holder, the landlord's interest is subject to a higher proprietary interest, the tenure-holder ought not, as the Bengal Government points out, to be able to fortify his title against the superior holder by rights acquired by himself as occupant against himself as tenure-holder. The proposal, accordingly, to strike out the words "or tenure-holder" in section 29 appears to be reasonable.

(*a*) Sub-section 2 of section 29 might be worded "shall not, by occupation of land within the area of his tenure, during its continuance, acquire a right of occupancy therein."

(*b*) A person who has a right of occupancy in land shall not lose it by subsequently holding the same land in farm.

(*c*) If a person who has a right of occupancy in land in which he is joint-proprietor, subsequently, on partition, becomes sole owner of the land, such land shall become khamar or zerat."

73. *Restriction of occupancy ryots' power to contract.*—One important aspect of the occupancy ryot's position, as defined by the Bill, is that presented by section 210, which enacts that no contract shall override the provision of the Bill as to the status of the occupancy ryot, the acquisition of occupancy rights, its incidents, the occupancy ryot's right to demand a diminution of rent on the ground of deterioration of soil, fall in prices or diminution of area, his right to demand a commutation of a produce rent into a money rent, his right to make improvements and claim compensation for them, and his immunity from ejectment except in execution of decree. The removal of these important matters from the sphere of contract has naturally excited much hostile criticism, all the more so that both Act X of 1859 and Act VIII of 1869, which re-enacted it for Bengal, expressly provided that their provisions should be subject to a written contract between the parties. The propriety of excluding certain contracts of ryots from the ordinary law of contracts was much discussed, when the Indian Contract Act was passed in 1872. Sir George Campbell, who was then Lieutenant-Governor, was strongly in favour of making express provision to meet the case of contracts by ryots, and I think drafted a section or an Illustration to carry out this object. His proposal was overruled, if I remember right, on the ground that the Bill, as it stood, provided sufficiently for all the grounds—fraud, misunderstanding, ignorance, undue influence, coercion, &c.—on which the legality of a contract could be impugned; and that it was better to leave the law in this form than to declare any particular class of persons incompetent to contract, or any particular class of contracts invalid. Grave reason ought to be shown for so important a change as that now proposed, not only in the general law of contract, but in the special provisions of the rent law on the subject. But the grounds of the proposed change have, I think, been somewhat misunderstood. Act X of 1859 introduced for the first time the ryot's power of contracting himself out of the rights which the Regulation conferred upon him. The results of this provision, as of most others in that deplorably ill-considered enactment, were unforeseen by its authors. They believed themselves to be confirming the resident ryot in his rights, and opening the door to other ryots to acquire such rights. They were, in reality, putting several most formidable weapons into the hands of the landlords for the destruction of all rights whatsoever. One of these was the rule which was understood as making occupancy rights depend on 12 years' continuous occupation of the identical plot. Another was the provision allowing contract to defeat the provisions of the law. This latter provision the evidence shows to have been employed with disastrous effect. Whether it be from ignorance, stupidity, inability to look forward, or the habit of submission to a powerful landlord, it is incontestable that the kabuliyats obtained by the landlords from the ryots are, in a large number of instances, such as it is inconceivable that any rational man, with a due knowledge of his rights and an independent will, should be induced to sign. How these documents are obtained, whether by force or fraud, we have no means of knowing; but they must be due to one source or the other. To take one conspicuous instance, the recent Mymensingh dispute, I was informed by an official, a strong advocate of the landlord's interest, who had himself carefully examined the entire file of papers, that he was perfectly satisfied that the great mass of kabuliyats, on which the quarrel turned, had not been *bonâ fide* executed by the ryots, but were either forgeries or in some other way improperly obtained. Now, to tell an illiterate peasant, whose income is perhaps Rs. 20 per annum, who is heavily

in arrears to the landlord and the mahajun, that it is open to him to contest such a document on the grounds specified in the Indian Contract Act, appears to me a sort of practical joke, which, unhappily, has been frequently perpetrated by the Indian Legislature, but of which every one is by this time heartily sick. The reasons for invalidating certain classes of contracts between landlord and tenant in England and Ireland are perfectly familiar, and they apply with still greater force in India. Speaking generally, the tenant and the landlord in this country are not sufficiently on the same level of knowledge or resources to make it possible for them to contract with that full understanding and independent will that are the essential ingredients in a valid contract. In the absence of these, any form of contract is a farce, and the law should prohibit farces wherever it is possible to do so. The section does not specify whether the intention is to invalidate all contracts within its scope, or only those made subsequent to the Act. In the latter case, effect will be given to a large number of contracts which, during the last two or three years, have been effected by the landlords in contemplation of the Act. On the whole, I am satisfied that, if all the provisions of the Act are not to be rendered nugatory, a most stringent restriction on the power of contract is necessary. It seems questionable, however, whether the rule might not be relaxed so as to meet cases, such as those of indigo-planters or wealthy ryots, in which the facts negative the possibility of oppression or undue influence, and the inability to contract would be found highly inconvenient. In such a case a proceeding before the Collector might be had to certify the competence of the parties. The relaxation, however, should, in my opinion, be kept within very narrow limits.

74. *The non-occupancy ryot.*—We next come to the case of the "non-occupancy" ryot. It is admitted that his position under the Bill will be far stronger than it is at present. Every non-occupancy tenant in possession will be exempt from enhancement except by a registered agreement or an agreement tendered to him through the Court under the provisions of section 60. If the ryot accepts the rent so tendered, or a rent which the court considers fair and equitable, he is safe from enhancement or eviction for five years. The court, in considering what is "fair and equitable" will have regard to the rents paid by similar tenants in the vicinity; but in no case must the rent be enhanced by more than 50 per cent.

75. *Grounds of ejectment.*—The non-occupancy ryot in possession can be ejected only by a decree given on the ground either—(*a*) that he failed to pay an arrear, or (*b*) that he has used the land in a manner to unfit it for the purposes of the tenancy, or broken a contract which by the contract involved liability to ejectment—and then only subject to the provisions for remedy or damages, in lieu of ejectment, contained in section 170; or (*c*) on the expiry of the term specified in a registered lease, if notice to quit has been served not less than six months before the expiry of the term; or (*d*) that he has refused to agree to a rent determined to be fair and equitable under section 60.

Section 98.
Section 58.

76. *Improved position of non-occupancy ryot.*—These sections give, and are obviously intended to give, a considerable decree of fixity to all existing tenancies. All grounds of ejectment, except the four specified, are taken away, and no one of these four afford the landlord the liberty of dealing in any degree as he will with the land. With a new tenant he can indeed fix what rent he pleases, but there his freedom ends. Unless in the case of a registered lease, he can, practically, never get rid of the tenant so long as the tenant either conforms to the terms of the lease, or pays the damages decreed for its breach, and submits to such enhancement as is found by the court to be "fair and equitable" with reference to existing rents in the neighbourhood. And the provision as to the registered lease will not apply to cases where the lease is executed with a tenant already in occupation, because there is an express provision that he is not to be deemed to be "admitted to occupation by the lease, although that may be its purport."

Section 60.

Section 61.

There can be no doubt that these provisions will be felt to work extremely harshly by the class whose existing rights they curtail. They will give a fixity of status to a large class of tenants, who do not at present enjoy it, and who in many cases certainly did not contemplate it when the tenancy commenced. It is, probably, the most violent interference with private rights which the Bill contains. The question is, can it be justified? The answer must depend on the view taken of the contention now advanced by extreme advocates of the landlord interest, viz. that, whatever may be the position of the occupancy ryot, as regards non-occupancy ryots, the landlord's rights are absolute, and interference in any shape is unjustifiable. The general considerations which must govern this point, and which show such a contention to be unsustainable, have already been considered.

77. *Proposal of the Rent Commission and original Bill.*—The Rent Commission dealt with the case by restricting the landlord's power to evict tenants of more than three years' standing. They recommended that the evicting landlord in such a case should be bound to pay the ejected tenant a year's improved rent, besides compensation for improvements. This proposal was not generally approved, and the Bill, proposed by Sir A. Eden, put no restriction on the landlord in his dealing with non-occupancy ryots, save one, which was a provision limiting the rent in every case to one-fifth of the gross produce. The Bill, as introduced into the Legislative Council, reverting to the proposal of the Rent Commission, affixed a practically prohibitive penalty—ten years rental, to eviction by a landlord who refused to let his tenant sit at a fair rental. The proposal of the Bill, as amended by the

Select Committee, is to leave the initial rent to the agreement of the parties, but to give all tenants, except those whose tenancy commences with a registered lease, a status falling little short of occupancy rights.

78. *Proposal of the Bengal Government.*—The proposal of the Bengal Government is somewhat different from the Bill. The Lieutenant-Governor regards all initial limitations on the rent and all direct attempts to restrict enhancement as vain, and the action of a lease, such as that contemplated in section 60 (7) as likely to be injurious, as stopping the accrual of occupancy rights. It appears to me, however, that it is the intention of section 60 (7) that, when a ryot gets the right to stay in for five years under that section, occupancy rights may meanwhile accrue. The only method in which, in the Bengal Government's opinion, the non-occupancy tenant can be benefited is by providing adequate compensation to the tenant, who is evicted, though ready to pay what the court regards as a "fair and equitable rent, regard being had to all the circumstances of the case, the capacity of the land and the condition of the ryot." If he refuses to pay this "judicial" rent, he should be ejected; if he agrees to pay it, he should, if his landlord insists on ejecting him, receive as compensation one-fourth of the judicial rent for each year in which he has been in occupation up to a maximum of five years' purchase. This proposal proceeds on the simple basis that a ryot who is in occupation of the soil, and is ready to pay a fair rent, has a right to stay there, and that from the historical point of view non-occupancy rents ought not to be higher than occupancy rents. The Lieutenant-Governor holds it to be established that while "the pergunnah rates existed, no class of tenant paid a higher rent than that allowed by it, and even now in parts of the country where ryots are strong, it is often the non-occupancy ryot who pays the lower rent. It is in accordance with the general feeling of the community which condemns capricious evictions as unjust and oppressive; and it would operate, not in the case of the real zemindars of the province, who do not, as a rule, evict, but in the case of subordinate landlords, newly enriched purchasers and middlemen, whose severe dealings with the cultivator are not sanctioned by public opinion or general usage. It is urged, moreover, that as the landlords gain under the Bill considerable facilities for enhancing the rents of the great majority of their tenants, they may reasonably consent, in the case of the other portion, to a curtailment, which will not, in fact, interfere with what is the usual course of dealing on well-managed estates.

79. *Bengal Government's proposal considered.*—It is in vain to hope that this proposal will meet with acceptance at the hands of those who regard the landlord's ownership as legally absolute so far as non-occupancy ryots are concerned, and who denounce any attempt to interfere with it as an indefensible invasion of private rights. It is only to those who adopt the view that the resident ryot has, by the law of India, rights of some sort, though they have been too often obscured in practice, and that it is essential, in the interests of the community, to rehabilitate him in those rights, that the present proposal will seem even open to discussion. I have already considered the grounds which seem to me to prove that such rights exist, and must, if we are to escape general agricultural destitution, be preserved. The danger towards which India seems to me to be drifting is that of the country becoming a huge *officina*, in which millions of human beings will be competing ineffectually in a desperate struggle of existence, living chronically at the lowest point compatible with continuance of life, and sinking, at the first additional pressure, below it. To avert this consummation, it seems to me essential to take every step to keep the standard of life and comfort as high as possible, and, where occasion offers, to raise it. With this object I would interfere—even at the cost of checking that immense desideratum, the growth of Indian manufactures—in order to prevent manufactures being carried on in a way to involve suffering and degradation to the operatives; and with a like view I think the Government should say—as, according to the law of India, I believe that it always has said to the landowners—"You have been constituted by Government the nominal owners of that which is to the many millions of India the exclusive material of existence; but your ownership is not absolute; we will not allow those millions to be at your mercy; we will not leave the cultivator of the soil, defenceless as he is, to fight his battle with you on the ordinary ground of contract. In such a battle he is certain to suffer; unrestricted competition will drag him down into degradation and ruin, which will, eventually, be your ruin too. In your interest, no less than his, we exercise the duty and right, solemnly recorded in our written law, to interfere for his protection." Assuming this to be the attitude of Government, is the provision that the actual occupant of the soil shall be entitled to sit at fair rents an unreasonable concession? We have seen what the position of the resident ryot was before Act VIII of 1859, and how it has deteriorated owing to the unfortunate language of that enactment. Can the present proposal be said to do more than establish the state of things which the authors of that Act believed to be the law of the land, and intended to preserve? I think it cannot; and believing this I sincerely trust that the proposal may commend itself to the judgment of those by whom this all-important question will have to be decided.

80. *The sub-ryot.*—The case of the sub-ryot is, for several reasons, the most difficult of any with which the Bill deals. On the one hand, he has no historical status whatever, being the outcome of the beneficial rents at which various classes have been allowed to sit during the last century. On the other, if, in the beneficent language of the Permanent Settlement Regulation, the Government is most bound to protect those who, as being most defenceless, most need its protection, there can be no doubt that it is here that we come on an agricultural residuum, the class without resource and ready to accept from a landlord, who is often, himself, in straightened circumstances, any terms which he hopes (and too often hopes wrongly) may prove compatible with his earning of the barest livelihood.

The inveterate tendency of the Bengali to sub-let, which has exhibited itself in every other class, makes it quite certain that this class will increase as time goes on. Nothing is known about its numbers but that it is already large, and that in some parts, so acknowledged is the position of the sub-ryot, that his holding has a marketable value. The Bill has been criticized, and I think justly, for the practical abandonment of this class to its fate, and for leaving the solution of a difficulty and danger, which must every year become more serious, to be attempted by some subsequent Government. No Bill will be in any way satisfactory that does not look the existing, or immediately imminent, state of things fairly in the face, and provide the best means which can be devised for meeting it.

81. *Provisions of the Bill for sub-ryot.*—The main provisions in the Bill, affecting the status of the under ryot, are (1) that any person, who holds more than 100 bigahs and sub-lets any part of it, shall be presumed to be a tenure-holder (section 5); and that any ryot who, except in case of disability, sub-lets more than half his holding, shall, on registration as a tenure-holder, be deemed to be one, except that his liability to enhancement of rent will remain as before.

Section 5.

Section 37.

The object of these provisions is that, on the ryot thus becoming a tenure-holder, his sub-ryots may move up into the status of ryots, and enjoy whatever privileges the law confers on them as such, and be in a position to acquire whatever rights of occupancy could be acquired from an owner or tenure-holder. I will not discuss them, because the Bengal Government, on grounds which seem very cogent, regards them as impracticable. It remains to consider whether the same object might not be attained in a more direct manner. The other safeguards provided by the Bill are—

(1) That the landlord of an under-ryot cannot demand from him a rent exceeding his own rent by more than 50 per cent. in the case where there is a registered lease, or 25 per cent. in other cases.

Section 62.

(2) That the under-ryot cannot be ejected except on decree, and at the end of the agricultural year, and on a written notice served six months before the end of the year.

Section 94.
Section 63.

(3) That his rent will be payable in instalments, not more than four, prescribed by the Local Government, and will be subject to the same rules as to alterations of amount on alteration of area, payments and appropriation, receipts, deposit, decree for ejectment for arrears, illegal cesses, damages for unreasonable suit, and distraint, relief against forfeiture, and measurement, as are provided for other tenants. He is excluded, apparently, from the provisions as to compensation for improvements, surrender and abandonment He will thus be generally in the position of a non-occupancy ryot, except that his landlord cannot demand more rent than 50 per cent. or 25 per cent., as the case may be. in excess of his own rent; that, subject to this, there is no restriction on enhancement; that he cannot claim compensation for improvements, and that he cannot acquire occupancy rights by continuous residence.

82. *Proposal of Bengal Government.*—The Lieutenant-Governor does not approve the restriction of the under-ryot's rent to a specified fraction of the ryot's own rent. Such a restriction, he says, would be easily evaded. and might, in some instances, produce hardship. In substitution he recommends a rule that in no case shall the rent of the under-tenant be more then $\frac{5}{16}$ths. or 31¼ per cent. of the value of the gross produce calculated in staple food-crops. As His Honor also recommends the maximum of 20 per cent. on gross produce for the ryot's rent, the result would be that, supposing ryot and under-ryot to be rack-rented, the ryot would be left with 11⅓ per cent. of the gross produce.

83. *Desirability of not deferring legislation as to sub-ryot.*—This protection seems most inadequate, and, difficult as it is to devise any better means of protection, I cannot help hoping that it may be possible to do so. The authors of the Bill recognize the possibility that the powers of transfer and sub-letting, which it confers "may in time lead to a state of things in which the great bulk of the actual cultivators would be, not occupancy ryots, but under-ryots, with but little protection from the law;" but they say, "if such a state of things should ever arise, we may rest assured that the Government of the day will know how to deal with it." This appears to me a most lame and impotent conclusion of the enormous labour which has been, for several years past, bestowed on the subject. The policy of leaving to posterity to dispose of difficulties, the way through which is not apparent to ourselves, is surely one which the experience of this subject, if any in the history of Indian administration condemns. We are now endeavouring, with the utmost difficulty, at the cost of much antagonism, class-feeling, animosity, alarm, and, I fear, of giving sore offence to the great body of proprietors in Bengal, to repair the mischief occasioned by the incomplete character of Lord Cornwallis' legislation. The reforms which cost such a struggle now might have been carried then without an effort, in fact, were believed by him to have been carried. Certain points were known to be obscure, and Mr. Shore urged that legislation should be postponed till the measure could be rendered more complete. Lord Cornwallis, however, resolved to go on, resting no doubt in the comfortable assurance that, if the protection afforded by the Regulation proved, in any case, insufficient, "the Government of the day would know how to deal with it." But has that assurance been justified? Did the authors of Act X of 1859 know how efficiently to remedy the defects of the law? or does any one now, after several years of inquiry and discussion, feel any real confidence as to the efficacy of the remedy proposed for a state of things which is agreed on all hands to be full of danger and anxiety? The history of the case seems to me to

point strongly in the direction of the desirability of dealing with the subject in a thorough, far-seeing manner, taking into account the tendencies which we know to be at work, and the results that the measure is likely eventually to bring about. Any measure which leaves the actual occupant of the soil to make the best fight he can, will, in my opinion, be a failure from the first, and will become a more signal failure every year it lasts, because the class, which it fails to protect will, year by year, become larger, its need of protection more pressing, and the consequences of the absence of protection more conspicuously disastrous. If our object is to have a substantial peasantry in occupation of the soil, how do we promote it by conferring, at the cost of the zemindars, all sorts of privileges on a class of persons, who are themselves often considerable landlords, and not at all likely to use these rights as landlords more sparingly than the zemindars? I agree with Mr. Justice Field when he says—"I can see no reason why the proprietary interest of the zemindar should be injuriously affected by legislation for the benefit of a middleman, while the corresponding interest of the same middleman is protected, to the detriment of the actual cultivator of the soil under him. On what principle could it be contended that the portion of a Rungpore jotedar, who holds 1,000 bighas of land, 50 or 100 of which he cultivates himself, while he sub-lets the remaning 900, should be protected as against the zemindar, while the tenants of the 900 bighas, who are the actual cultivators of the soil, and who are as much deserving of care and protection, as the jotedar himself, are left more at his mercy than he is left as regards the zemindar?" The necessity of protection is, indeed, often greater, because the middleman is a smaller, and, therefore, a more grasping and tyrannical landlord. The question is, how can this protection be afforded?

84. *Proposals as to sub-ryot considered.*—One proposal is to allow of occupancy rights being acquired only over an area sufficient to maintain the ryot himself and his family; another is to provide that, with respect to any portion which the ryot sub-lets, the tenant shall acquire, as against him, the same rights which he would against a propietor, subject, of course, to the proprieter's superior right. This latter proposal seems, at any rate, in harmony with the general spirit of customary law in India, which has always tended to give the actual occupant of the soil something less precarious than a mere tenancy-at-will. It is, obviously, a historical accident that the ryot be the one landlord whom the law leaves unfettered in his dealing with his tenants, while it imposes every sort of restriction on the zemindar and tenure-holder. It is an anomaly that ought not to be allowed to remain. On the other hand, we need feel no scruple in imposing restrictions on the ryot, because, in his case at any rate, there are no vested interests; his power of sub-letting will be now, for the first time, recognized by the Legislature. The object in protecting the occupancy ryot is to make a substantial tenant, not to make a new class of landlords, less unfettered, less respectable, and, presumably, less considerate than those already in existence. I would, therefore, instead of section 37, substitute a provision that, immediately the ryot sub-lets, he should become liable, as regards his tenant, to whatever restrictions the tenure-holder is liable to as against his. This would give the under-ryot, in addition to what the Bill now gives him, the benefit of the restrictions on enhancement, the right to compensation for improvements, and the power of acquiring occupancy rights. I should be inclined to cut down still farther the margin between the rent which the ryot pays and that which he may demand. A man who can get 10 per cent. of the gross produce of land by simply sub-letting it, is likely to regard that as the best thing he can do with it. This is just what we want to discourage. The object is to prevent middlemen from buying occupancy rights for the purpose of sub-letting them at a profit. Why should this object not be effected directly by providing that, except in cases of disability, the ryot cannot demand a higher rate than he pays? This would put an end to the middleman's business, and replace the occupancy right on its original proper footing as a protection to the occupant of the soil, not the creation of a fresh and unrestricted class of landlords.

85. *Codification of the entire subject desirable.*—To pass from matters of substantive law to questions of form and structure, I would venture to suggest that the Bill, though, for the most part, accurately drawn, in susceptible of improvement in scope, language and arrangement. In the first place, the determination not to follow the Rent Commission in its attempt to make the Bill a Code, mentioned in clause 10 of the Statement of Objects and Reasons, is, in my opinion, much to be regretted. The new Act ought, I think, with all deference to the contrary view expressed by the Select Committee, to be "a complete and self-contained statement of the whole law" on the subject; nor do I see why, because attention is mainly directed to certain important amendments of the existing law, the opportunity should not be taken for codifying the entire law on the subject. When is it probable that the law will be better known and more thoroughly and generally understood than at present, when so many officials have been studying and considering it for several years, and when the numerous excellent reports and memoranda, issued by the Government, Commissions, or individual officials have thrown so much light on every portion of it,—when the Government of India has formally placed before the Secretary of State an elaborate statement of its view of the whole subject, and the Secretary of State has expressed his opinion on that statement? All the cogent reasons, which have determined the Government to persevere with the codification of other branches of Indian law are at least as applicable to this part of the law as to any other. The Government of India* is fully alive to the serious evils which have arisen from the misapprehensions occasioned by the incomplete form of Act X of 1859, and from that enactment, intended by its authors to be an additional enactment, being understood

* Despatch of 21st March 1882, section 51.

by the courts as an exclusive enactment. It is moreover, a matter of real administrative importance that the law as to landlord and tenant should be so clearly and concisely stated as to enable the officials, who are called to deal with it to get a clear and comprehensive view of it. It is in the interests of all that ambiguities and obscurities should not be left for suitors and advocates to wrangle over, and the courts to spend precious hours in endeavouring to elucidate.

86. *Amendments in the drafting of the Bill: Preamble.*—I regret the omission of the preamble which appeared in the draft No. 437 of 17th January 1883. Considering the pertinacity with which the opponents of the Bill have denied all the main legal grounds on which the right of Government to legislate depends, and have taken their stand on the assertion of absolute proprietorship conferred on the zemindars by the terms of the Permanent Settlement, it seems to me well worth while to assert those grounds in an unmistakeable manner, to show, at the outset of the Bill, that the Government takes *its* stand, too, on the Permanent Settlement, and is acting unquestionably well within the letter and spirit of the regulations when it legislates in any way it thinks right for the benefit of the ryots. I should be disposed to add words to the effect that, from the time of the Mogul Government, it has been a recognized maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupies, and that the amount of this rent should not be left to the arbitrary determination of the zemindar, but should be ascertained and fixed by the Sovereign Power.

87. *Illegal exactions.*—I should have thought also that more prominence, emphasis and exactness should be given to the provision contained in section 85 as to abwabs and other illegal imposition. In one sense it is the key-stone of the Bill. The framers of the Permanent Settlement Regulations were fully alive to the fact that all precautions, by way of limiting rent and otherwise protecting the tenant, were vain unless collateral exactions were prohibited, and the landlord rigidly bound down to the rent reserved in the pottah. This section refers to certain impositions known as abwab, mahtut, &c., but is it clear that it forbids the landlord to levy a fine on admission, to contract with the tenant to pay cesses, &c.? I observe from his speech in Council that Sir S. Bayley seems to contemplate that the landlord will levy a fine on admitting an occupancy tenant; but if he can, what difference is there between paying the additional rental in a lump sum, or paying it year by year, except that the former is the more oppressive to the tenant, and the more fatal to the chance of his being able to do justice to the land? The suit provided in section 86 is a very old contrivance, the uselessness of which experience has conclusively established. It would be far better to empower the Magistrate to impose a fine in any case in which he becomes aware of such an exaction. The section should, in my opinion, provide that, wherever a maximum rent is specified, any attempt to evade that restriction by an initial payment, and, in every case, the exaction of any payment beyond that specified in the lease, or recorded at the registrar's office, should constitute a criminal offence, and that the criminal court trying the case, should order re-delivery of the payment so made.

88. *Arrangement and language of the Bill.*—To pass to minor questions of drafting, the Bill ought to state, at the outset, the limits of its application; but it is not till we get to its concluding sections that we learn what those limits are. Chapter XVII, for instance, it seems to me, ought to come as part of section 2. It provides for the cases in which contract shall not override the Bill, and for various cases in which the Act shall not apply, and for various cases in which custom is to govern the case. The same observation applies to section 228, which defines the limits, within which the Government, in its capacity of landlord, will be subject to the Bill. The language of the Bill, in many instances, moreover, leaves much to be desired. The definitions of "tenure-holder" and "ryot" are not exact; that of "tenure-holder" would include a mortgagee in possession or an agent—and omits, as several critics have pointed out, the fact that the tenure-holder often has more than a mere right to collect rents. Section 64 is inconsistent with section 6. Such phrases as "contracts for the reclamation of waste land" in section 212 will, I fear, prove to be a mine of litigation. So will section 213 as to "chur" land, and section 215 as to service tenures. Section 216, as to homestead land, disposes of a most important branch of the subject in five lines, and, as might be expected, in a wholly inadequate manner. Sections 225 and 226 provide important modifications of the rights of enhancement which ought not to figure in a "supplemental chapter" along with "penalties," "power to make rules," and other like topics. Section 227, again, appears to imply that "anything payable or deliverable in respect of rights of pasturage, forest rights, fisheries, &c., is not rent. Section 228 leaves in some obscurity the extent to which the Government intends to exempt its own proceedings, in the capacity of landlord, from the operation of the Act. Clause (*b*) of that section is inconsistent with the repealing section and Schedule I. The Bengal Government says that the result of the definition of "estate." and the other provisions of the Act, is that the only advantage which Government intends to retain over the ordinary zemindar is that afforded by the "Certificate" Procedure If that is so, it would be well to make it clear at the outset. Few people reading section 228 would suppose this to be the intention. Section 228 provides that nothing in the Act shall affect certain enactments, some which section 3 repeals. Section 210 leaves doubtful the question, whether it is intended to affect all contracts of the classes, or only those made since the commencement of the Act. These and other like points will, doubtless, be considered and remedied when the Bill is recommitted to the Select Committee. I refer to them as indicating that, in my opinion, such reconsideration is indispensable.

89. *Recapitulation.*—In the foregoing paragraphs, I have endeavoured to consider with care, and to state with some approach to exactness, the main out-lines of the problem, of which the present Bill is the attempted solution. It may be convenient to recapitulate the principal conclusions which it has been my object to establish. They may be summarized as follows:—The physical, social, and economical conditions of Bengal are such as to render inevitable the growth of a dense agricultural population, whose increasing numbers must continually add to the difficulty of existence. That difficulty does, in fact, in many parts of the Province, already exist in a somewhat acute form. The profits of the soil, to a share of which, specified by itself, the State was, by the immemorial law and custom of the country, entitled, are now divided between the Government, which receives 3½ millions sterling, 150,000 proprietors, and a million tenure-holders, who receive something over 17 millions, and 10 millions of ryots, who are the tillers of the soil and live on its products. The rights of each of the three latter classes were, at the time of the Permanent Settlement, defined with accuracy, and placed, as the framers of that measure believed, on an equally secure footing, the object being that all alike should enjoy, with equal assurance, the advantages resulting from the surrender of its own rights then made by the State. The Government, at the same time, solemnly announced that this surrender in no way impaired its constitutional right of interfering, whenever it deemed necessary, for the protection of every class of agricultural tenant or its intention of doing so. While the rights of the landowners, under this settlement, have been preserved with exactitude and completeness, the privileges accorded to the ryots have, from various causes, become obscured, and in many cases have fallen into abeyance. A large proportion of the tenantry, however, estimated at between 70 and 90 per cent., enjoy occupancy rights. The position of the rest, as well as of the tenants to whom these occupancy tenants sub-let, is unsecured by legislation, and shows a dangerous tendency to the consequences of unrestricted competition Legislation which was undertaken in 1859 with a view of affirming the privileges of the resident ryot, and of enlarging the definition of occupancy rights, has subserved an altogether opposite purpose, and proved a powerful instrument for the destruction of occupancy rights. The Act has been, and is being, extensively employed for this purpose: in parts of the Province occupancy rights are on the high road to extinction. As competition increases, and the value of land rises, this tendency is likely to intensify. General poverty in one part of the Province and agrarian troubles in another attest the presence of unhealthy relations between landlord and tenant and the necessity for legislation. The facts of the case and the opinions of the best-informed advisers as to the remedies for which they call, have been made, for several years past, the subject of a research more prolonged, more patient, exact and thorough than any known in the annals of Indian Administration. In the course of the investigation certain conclusions have been arrived at, and certain principles have been agreed upon, by the Secretary of State and the Government of India, as shaping the course of the forthcoming legislation. Those conclusions and principles are supported by as weighty a body of official opinion as was ever brough to bear upon a great administrative question. They are in general accordance with the recommendations offered by the Famine Commission, after two years' elaborate enquiry into the conditions of the agricultural classes, and with the deliberately recorded opinion of successive Lieutenant-Governors of the Province. The proposed course of action has given surprise and annoyance to landlords, who were fast losing sight of the constitutional and legal restrictions by which the ownership of land in India is surrounded. The natural resentment at an unwelcome curtailment of rights, believed to be absolute, has unfortunately been fostered, alike by contemporaneous political events and the unhesitating advocacy of allies to whose co-operation and sympathy great importance was, with good reason, attached. This state of things, while it enhances the difficulty of a peaceable solution, renders it imperative on those who disapprove of that advocacy, as founded on an incorrect historical view and an unsound economical theory, to explain explicity the reason of their dissent. With this conviction I have felt it my duty to lay before the Government, I fear, at wearisome length, the grounds on which I believe the proposed enactment to be perfectly within the legislative powers of the State, and to be calculated to promote the true interests of the classes whom it concerns.

H. S. CUNINGHAM.

J. W. and others -Reg. No. 10570C—300—20-12-84.

No. 340, dated Calcutta, the 29th January 1885.

From—C. A. WILKINS, Esq., Officiating Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of Bengal, Revenue Department.

I AM directed to forward, for the information of His Honour the Lieutenant-Governor, the enclosed copy of a minute recorded by the Hon'ble Mr. Justice O'Kinealy on the Bengal Tenancy Bill.

MINUTE ON THE BENGAL TENANCY BILL.

1. BEFORE discussing the merits of the present Bill, which has been forwarded for the opinion of the Judges of the High Court, I shall give a summary of the relations which, under the Permanent Settlement and subsequent Regulations and under the rulings of the courts, existed between the zemindars and ryots up to and after the passing of Act X of 1859. It is only through such an examination of the law that we can arrive at a due appreciation of the duty imposed on the civil courts of Bengal by Regulation VII of 1799, namely, the duty of determining the rights of every description of landlord and tenant, whether the same be ascertainable by written engagements or defined by the laws or regulations or depend upon general or local immemorial usage.

2. In legislating, according to the customs of this country, one of the chief difficulties to be contended with is the erroneous ideas of the cultivators' rights which follow from paying too much regard to the relative rights of landlords and tenants in England. Forgetting that the system of land tenures in England is peculiar to that country, some seem to imagine that in India also a zemindar must hold of the Crown and that all other rights in the soil must be carved out his tenure. There could, however, be no greater mistake than this.

3. The rights of the people of India in the soil must be determined by the laws and customs of India and not of England, and for the only authoritative declaration of what those laws and customs were, we must refer to the laws themselves. What then was the law and custom in India regarding the right of the Government in the soil? The answer to this question is to be found in Regulation XLIV of 1793 and XLI of 1795, where it is declared that—

"By the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every beegah of land (demandable in money or kind, according to local custom) unless it transfers its rights thereto for a term or in perpetuity, or limits the public demand upon the whole lands belonging to an individual, leaving him to appropriate the difference between the value of such proportion of the produce and the sum payable to the public whilst he continues to discharge the latter."

4. This is a statement of the law as it existed up to 1793. Under it Government, it will be observed, claimed no *estate* in the land. Its rights were limited to the receipt of a land tax. If then by the ancient law of the country the right of the State was so limited, the question occurs, was the soil the property of the zemindars or of the ryots? The answer to this question as far as concerns the zemindars is found in Regulation II of 1793, in which it is declared that—

"*The property in the soil was never before formally declared to be vested in the landholders.* Nor were they allowed to transfer such rights as they did possess or raise money upon the credit of their tenures without the previous sanction of Government. With respect to the public demand upon such estate, it was liable to annual or frequent variation at the discretion of Government The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the ryots and tenants for each beegha of land in cultivation, of which, after deducting the expenses of cultivation, ten-elevenths were usually considered as the right of the public, and the remainder the share of the landholder. Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government.

5. This passage is conclusive on the point that the soil was not the property of the zemindars. The zemindar had an interest in the soil just as the State had. He had a profit issuing from the land which however he could neither sell nor mortgage. An estate in the soil out of which the ryot's interest was carved he certainly had not. Consequently the ryot's interests are in no way dependent under the common law of India on those of the zemindar.

6. If then neither Government nor zemindar had an *estate*, in the English sense of that term, in the land, the only conclusion is that if such an estate existed at all under the customary law of Bengal, it belonged to the third party interested, namely the ryots. They did not hold from or under the zemindar, and what rights they possessed they held by law—the custom of the country. To show what those rights were, I give three examples referring to Northern, Western, and Eastern Bengal.

7. In 1793 Behar was settled by Mr. A. Seton, who wrote an interesting report, describing the nature of the ryots' holdings in that district. Among other things he said:—

"It is also understood that a ryot has a *sort of prescriptive right* to continue on the ground thus occupied by him while he adheres to the rates expressed in the village pottahs; inasmuch as I do not recollect an instance of a zemindar having attempted to remove a ryot who had not been guilty of a *breach thereof*."

8. At page 529 of the Fifth report, it is stated in regard to Midnapore:—

"The poorest ryots are tenants, and by the custom of the country they are considered as a *sort of proprietors*, entitled to a perpetual lease.

9. Lastly in the Selections from the Bengal Government, No. 11, the tenures of Assam in 1839 are thus described:—

"The ryots are now considered to have *full proprietary* rights in all their lands of all description. * * * * I consider all the estates in Assam, of all description and sizes, to be *freehold*, and held subject to the only condition of paying the Government tax on the land; and all occupants are, with little exception, freeholders."

10. I will only give another reference. In 1851, a memorial was addressed to the Legislative Department by Sumbhunath Pundit, subsequently a Judge of the High Court, Unnodaprasad Banerjee, now Government Pleader of the High Court, Hurrish Chunder Mookherji, Secretary to the British Indian Association, and others. It will not be denied that these gentlemen were conversant with the rights of the ryots, nor asserted that they were biassed in their favour. They said:—

"*It has, we believe, not yet been denied that the interest of a khoodkasht ryot is transmissible by sale, gift, and succession, and that his right of occupancy does not terminate by any of those acts or omissions which determine the rights of leaseholders generally. In certain points of view, a khoodkasht tenancy constitutes the highest title* to real property known to the laws of this country."

11. In the opinion expressed in this extract I concur; and the remarks I have already made support it. They go to shew that the rights of the ryot did not flow from the zemindar, nor were they carved out of his estate. On the contrary, the interests of the ryot were antagonistic to those of the zemind the rights of both depended, in their nature and extent, on the customary la the country, but while the right of the zemindar was a share in the profits right of the ryot extended to the land.

Such being the relative position of zemindar and ryot under the cor law of the country, the question is how far the position was effected by Statute Law. For the solution of this question I turn to the Regulations as t chief source of information. They limited freedom of contract, and invalidated all custom opposed to them. Let us then see what rights under those Regulations were granted to the zemindars and what limitations were thereby imposed upon them. Section 54 of the Permanent Settlement (Regulation VIII of 1793) is as follows:—

"The imposition upon the ryots, under the denomination of abwab, *mahtote*, and other appellations, from their number and uncertainty, having become intricate to adjust, and a source of oppression to the ryots, all proprietors of land and dependent talukdars shall revise the same in concert with the ryots, and consolidate the whole with the assul into one specific sum. In large zemindaries or estates the proprietors are to commence this simplification of the rents of their ryots in the pergunnahs where the impositions are most numerous, and to proceed in it gradually till completed, but so that it be effected for the whole of their lands by the end of the Bengal year 1198 in the Bengal districts, and of the Fusli and Willaity year 1198 in the Behar and Orissa districts, these being the periods fixed for the delivery of pottahs, as hereafter specified."

Section 55 enacted that:—

"No actual proprietor shall impose any new abwab or mahtote on the ryots on any pretence whatever."

12. Sections 56 and 57 describe the variations which the form of the pottah may assume, and section 58 enacted that:—

"Every zemindar, independent talookdar, or other actual proprietor of land, and every dependent talookdar, shall prepare the form of a pottah or pottahs conformably to the rules above described, and adapted to the circumstances of his estate or talook; and after obtaining the Collector's approbation of it (which approbation shall be signified by such officer

superscribing the form with his name and official appellation) he is to register a copy of the form or forms in the Dewany Adawlat of the zillah, and to deposit a copy in each of the principal cutcheries in his estate or talook. Every ryot shall be entitled to receive corresponding pottahs on application and no pottahs of any other form shall be hereafter held valid."

And section 65 enacted that:—

"No proprietor or dependent talookdar shall contract any engagement with any underfarmer or authorise any act contrary to the meaning or spirit of the regulations."

13. From this it is clear that no zemindar had power to compel his ryots to enter into any contract which had not been approved of by the revenue officers of Government. These officers were invested with the widest powers of control, and were empowered not only to decide whether any given form of lease was contrary to the Regulations, but also whether it was suitable to the particular zemindar's estate. If the lease offended in either respect, it was void. Freedom of contract in the sense that a landlord had the power to impose any restrictions he desired on his ryots without the sanction of the executive officers, or as it is now called "power to let his property as he liked," was entirely unknown. The conception was wholly foreign to the Permanent Settlement Regulations.

14. So much in regard to covenants in leases. Now let us see what rules prevailed, as to their duration and as to the rents secured by them. The former point may be briefly dismissed by the statement that under section 2 of Regulation XLIV of 1793, zemindars were not entitled to issue pottahs, even when sanctioned by the revenue authorities, for a term exceeding ten years. The latter point, that regarding rent, will be made clear by a reference to section 6 of Regulation IV of 1794, which laid down rules for determining the rates of the pottahs granted under the Permanent Settlement Regulation. The section is as follows:—

"The approbation of the Collector required to be obtained to pottahs by section 58 Regulation VIII of 1793, is to be considered to extend to the form only. If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand pottahs, regarding the rates of the pottahs (whether the rent be payable in money or kind), it shall be determined in the Dewany Adawlut of the zillah in which the lands may be situated, according to the rates established in the pergunnah for lands of the same description and quality as those respecting which the dispute may arise."

And in section 7 it is stated that the rules in section 6 not only apply to those pottahs which the tenants were entitled to obtain under the Regulation of 1793, but also to the pottahs which they were entitled to receive after the expiration of the first ten years. It runs as follows:—

"The rules in the preceding section are to be considered applicable not only to the pottahs which the ryots are entitled to demand in the first instance under Regulation VIII of 1793, but also to the renewal of pottahs which may expire or become cancelled under Regulation XLIV of 1793. And to remove all doubts regarding the rates at which the ryots shall be entitled to have such pottahs renewed, it is declared that no proprietor or farmer of land, or any other person, shall require ryots whose pottahs may expire, or become cancelled under the last-mentioned Regulation, to take out new pottahs at higher rates than the established rates of the pergunnah for lands of the same quality and description, but that ryots shall be entitled to have such pottahs renewed at the established rates upon making application for that purpose to the person by whom their pottahs are to be granted, in the same manner as they entitled to demand pottahs in the first instance by Regulation VIII of 1793."

15. Therefore the relative positions of the zemindar and the ryot were as follows:—The zemindar was bound to respect an existing arrangement, but if he found a resident ryot holding at less than the established rates, he could, under section 60 of the Permanent Settlement Regulation, cancel his pottah and assess him at the pergunnah rates, but could not dispossess him as long as he agreed to hold. Further, the zemindar was restricted from forcing on the ryot any lease unless it had been previously approved of by the Revenue officers of Government, and even then for no longer term than ten years. Furthermore the ryot had power to demand a perpetual renewal at the expiration of each term at the pergunnah rate of rent. In other words, the rate at which the zemindar could demand rent from his ryots, of whatever denomination they might be, was simply the established rate of the pergunnah for lands of the same quality and description, the imposition of any cesses being at the same time strictly prohibited.

16. Such was the position given to ryots in Bengal under the Permanent Settlement, a right to hold at the customary rates for ever. What is his position now? The answer to this question is to be found in the forms of kabulyats

referred to by Sir Stuart Bayley and Mr. Ilbert in their speeches on the introduction of the Bill. The answer is that the cultivator has no right to occupy the land or is rapidly contracting himself out of his right; that he cannot claim to hold or renew at the customary rates, which no longer exist, but at the amount demanded by the zemindar; that in many cases he pays the taxes imposed by Government on the zemindar, although this is by law expressly declared to be illegal, and in some he is clogged by arbitrary restrictions of the most childish nature.

17. I have seen it urged as a reason against the necessity of the proposed law that the zemindars are merely acting within their rights. No doubt this is to a certain extent true except in the matter of the exaction of taxes or cesses. The action of the courts, and occasionally of the Legislature, since 1793 has had the effect of obscuring, if not of abrogating the ancient rights of the ryots; but it affords no answer to the claim, enforced as it is by lamentable experience, that the law should be changed so as to prevent ignorant cultivators from giving up their rights under pressure and placing themselves wholly in the power of an unjust zemindar.

18. Again it has been urged that the leases referred to in Select Committee were isolated examples, and that the exaction of oppressive engagements has not yet grown into a general custom. Granting this, it would to my mind form no sufficient answer, for what may be done by one bad landlord may be done by another. As a matter of fact, however, the assertion is not true. Some time ago I made a collection of leases in force in different districts, and as a rule they contain oppressive restrictions. I give some examples from districts representative of all degrees of advancement or backwardness in Bengal. The following is from Burdwan:—

"Should you fail to pay according to the specified instalments, you shall be liable to pay interest at the rate of half anna per rupee per month (37½ per cent). No objections as to too much drought or rain will be entertained, nor the objection that the land was left fallow or that you have incurred loss therefrom will be considered. If you fail to pay rent according to the specified instalments, the said land shall be let to other tenants. *Further, in future if there be any new cesses, you shall be liable to pay the same.*"

The next is from Jessore:—

"You will make no objection on account of dearth or inundation; you will keep up the boundaries, and *yourselves prepare dams and embankments.* On default the arrears will be recovered with interest at ½ anna per rupee a month and costs of suit. You shall pay in addition to the fixed jumma the present *road and public works cess* and *whatever cess may hereafter be levied.*"

The following is from Bogra:—

"If you default in payment you shall pay interest on the amount of the arrear at the *rate of ½ anna* per rupee per month from default till the date of realization. If you default twice in succession *we shall of our own authority eject you* and recover the arrears of rent and hajut with interest as above and costs, * * * *and neither you nor your heirs shall object, or prefer any claim to possession* of the jote. * * * . You shall not cut down or sell trees of any sort without written authority. If you do so or allow others *you shall pay without objection ten times the value of each tree, and if you object* the amount shall be received with costs. * * * *You shall pay in addition to your rent all cesses that may be imposed by Government.* Neither you nor you heirs shall, during the period the jote remains in your possession, claim abatement of the gross rental or the rate assessed *On the determination of the term* you shall *withdraw from the jote* * * *. If any new tenant, intending to settle in the village of Amjhoopee wishes to take certain plots occupied by you, you shall give up the same without objection.* If you do not, any loss ensued to us we shall recover the amount by suit with interest and costs as above and you shall not object."

I shall finish by giving the conditions exacted in Mymensingh:—

"I shall take a new settlement at the end of this term; if not, I shall have no concern with the land. *Whatever rent shall be settled* after survey and assessment I shall agree to pay. If I fail to pay any instalment, I shall pay interest at the rate of 1 anna per month to date of realization. I shall not cut down any tree or allow any other person to do so. *I shall pay separately and without excuse whatever road cess, public works cess, and any other taxes or expenses which I shall be asked to pay by Government or yourself.* If I lease the house and land and remove to any other place, or if I farm, mortgage, sell, make a gift, or alienate it in any way or any portion of it, you shall be competent by order to take possession, and having dispossessed (the new-comer), settle the land with others. *After such settlement my heirs shall have no right or concern with the house or land.* Any claim or objection advanced by my heirs to a right of occupancy shall not be accepted."

19. I continue my examination of the Regulation law. The first Regulation passed in this century which exercised an important effect on the relation of landlord and tenant was Regulation V of 1812. Section 3 of that Regulation repealed

such portions of Regulation VIII of 1793 as required that the proprietors of land should prepare forms of pottahs, and that such forms should be revised by the Collectors, and that engagements for rent contracted in any other mode than that prescribed by the Regulations in question should be deemed invalid. It also empowered zemindars to grant leases to talookdars, under-farmers, and ryots in such form as the contracting parties might deem most convenient and most conducive to their respective interests; provided, however, that they (the zemindars) shall have no power to impose arbitrary or indefinite cesses, whether under the denomination of abwab, muthote, or any other denomination. The meaning of this section was apparently doubtful, but any doubt which might have arisen was cleared away by section 2 of Regulation XVIII of 1812. This Regulation introduced a new ground of enhancement of the ryot's rent. Section 6 of Regulation V of 1812 declared that where the established rates existed, those only could be obtained by the zemindar; but section 7 laid down a different principle for cases where no pergunnah rates existed, and ran as follows:—

"In cases in which no established rates of the pergunnah or local division of the country may be known, pottahs shall be granted, and the collections made according to the rate payable for land of a similar description in the places adjacent, but if the leases and pottahs of the tenants of an estate generally, which may consist of an entire village or other local division, be liable to be cancelled under the rules above noticed, new pottahs shall be granted and the collections made at rates not exceeding the highest rate paid for the same land in any one year within the period of the three last years antecedent to the period at which the leases may be cancelled."

Section 10 referred to notices to enhance the rents of the cultivators and enacted as follows:—

"Unless such notification be duly served, no greater rent shall be exigible by process of distress or confinement of person, nor recoverable by suit in court, than the cultivator or tenant was bound to pay under his previous engagements; and if more be levied from him, he shall be entitled to a refund of the excess with damages, on proof of the circumstances before a Court of justice."

20. The effect of this Regulation on the scheme of the Permanent Settlement is given in construction No. 234 of the Sudder Dewany Adawlut issued in answer to a letter from the Judge of Rungpore in 1816. The letter ran as follows:—

Paragraph 4.—"The number of summary suits instituted annually since the year 1810 is exhibited in the margin. The increase is to be attributed to the operation of Regulation V of 1812, which seems to have been understood by the farmers and zemindars as authorizing them to consider the ryots, on the expiration of their leases, as tenants-at-will, and has consequently led them to demand enhanced rents in most parts of the district. The provisions of section 15 have also induced many who had demands against their tenants on old engagements to substitute summary prosecutions for the former mode of distraint.

Paragraph 5.—"By far the greater number of summary suits preferred last year were for arrears of rent due on kabuliuts, but many of those that have lately been instituted are consequent to the more general operation of section 10, Regulation V of 1812, and are preferred either by the ryots after releasing their property from distraint, or by the farmers or zemindars to recover increased rents on the grounds of having served their tenants with the notice described in the above section and Regulation, the general principles of which, although it is professedly enacted for the guidance of persons purchasing lands sold for arrears of revenue, appear to be applicable to all cases where no written engagements exist, as the respective rights of the proprietors and the ryots, considered independently of their mutual agreements, cannot be supposed to be altered by the mere circumstance of the sale of the estate.

Paragraph 6.—"On first view of section 10, Regulation V of 1812, it might be inferred that the zemindars or their representatives possess the power of exacting, in the first instance, by distraint o by a summary process, whatever amount they may have thought proper to insert in the notification required to be conveyed to their tenant, the latter having only the option of resigning his land, or continuing to hold it subject to paying the enhanced rent, until he can prove the injustice of the demand by a regular suit. Such an interpretation, however, does not seem to be easily reconcilable with that part of section 7, Regulation IV of 1794, which, being declaratory of the rates at which the ryots were entitled to demand pottahs, and, of course, to continue in possession of their lands, cannot be considered as abrogated by section 3, Regulation V of 1812, and I have hitherto deemed it necessary to require zemindars and farmers, prosecuting summarily for enhanced rent, or defending suits instituted against them under section 15, Regulation V of 1812, to shew that the amount demanded in the notification served on their tenants was conformable to the pergunnah rates and the actual extent of land

Paragraph 7.—"Should this construction of the Regulation be correct (and I beg the favour of your informing, should the Court consider it otherwise), it is evident that in the generality of suits denominated summary, it will not be necessary to adduce evidence to prove the pergunnah rates, the quality of the cultivator's land, and frequently the quantity thereof, all of these points being usually disputed, and even the last very frequently remaining doubtful until actually measured, in consequence of the fraudulent reduction made by the zemindars before the decennial settlement in the nominal extent of every farm or jote on their estates for the purpose of imposing upon Government and obtaining their lands in perpetuity on favourable terms."

The answer of the Court was as follows:—

"The Court entirely concur in the construction of section 10, Regulation V of 1812, stated in the 6th paragraph of Mr. Scott's letter dated the 28th July 1815, and resolve that he be informed accordingly. The Court observe that the written notice required by section 9 of that Regulation, when no written engagement may have been entered into, expressly refers to tenants subject to an enhancement of rent under subsisting Regulations, including, of course, the unrepealed provisions in section 7, Regulation IV of 1794, relative to the renewal of pottahs at the established rates of the pergunnah."

21. Thus it is clear that after Regulation V of 1812 was passed, every ryot was entitled to demand from his landlord a pottah at the established rates of the pergunnah, if they existed, and to obtain a renewal of it on the expiration of the term. But where there were no pergunnah rates, the ryot was liable to pay the same rate as was paid for lands of a similar description in the places adjacent. I think there was no point on which the members of the Rent Commission came so nearly to the same opinion as on the right to hold at the customary rates. I held the opinion strongly. Mr. Field and Mr. Mackenzie agreed in asserting—

(1) That the authors of Act X of 1859 did not intend to effect any radical change in the rights and status of the cultivating classes.

(2) That according to law, up to 1859, the only class of ryots recognised as entitled to hold at specially privileged rates were those ryots whose rates were fixed for ever.

(3) That on a correct interpretation of the Regulations and Acts before Act X of 1859 no landlord was *legally* entitled to raise the rents of any village ryots above the pergunnah or customary *nirikh* or rate.

Baboo Peary Mohun Mookerji said:—

"On no one point are the early Regulations more explicit than on this, that with the exception of certain privileged ryots the general body of ryots were liable to pay rent at the established rate, which was understood to mean fully as much as they could afford to pay."

I adhere to the opinion, an opinion in which we all concurred, that a zemindar could not *legally* demand more than the pergunnah money rates. But the law was not powerful enough to defend the ryots, while the zemindars succeeded in breaking the rates and in obtaining from their ryots what they had no legal right to demand.

22. In regard to talookdars, the rule was somewhat different, and they were liable to assessment under section 51 of Regulation VIII of 1793, which had no application to ryots. (See *Ram Chunder Dutt* vs. *Jugesh Chunder*, 12 B. L. R., p. 229.) This section was soon found defective. In the case of *Bunchanund* vs. *Hurgopal Bhadoory*, 1 Sel. Rep., p. 192, decided in the year, a talookdar was sued for arrears of rent at an enhanced rate. There was no doubt that his tenure was liable to enhancement, but the difficulty was to determine the proper rate. The decision was as follows:—

"The court entertained no doubt of the lands being held by the respondent at a variable rent, or of their being that description of tenures on which the zemindar is entitled to demand an increase of rent in proportion to the ascertained assets; and as there did not appear to be in the pergunnah any settled rates of rent for similar tenures, according to which the proper rent could be adjusted, it was determined that the rent demandable from the respondents should be settled by an actual survey and assessment, to be made at the expense of the appellant, unless the parties should come to an adjustment between themselves. In the event of no adjustment being made by them, it was directed that the Zillah Judge should cause a measurement of the lands, and estimate their produce, and after deducting 10 per cent. as the customary rate of the talukdars, together with the actual charges of collection, should fix the residue as the annual rent by the appellant for future years, as well as the rate at which the arrears of the period specified in the claim of the appellant should be adjusted."

23. The reason of this decision is best given in a note by the Judges, in which they say. "There being no rule expressly applicable to the adjustment of rent in this case, the decision was passed upon an equitable consideration of the right of the zemindar to receive a variable rent, proportionate to the produce of the lands which formed a constituent part of his zemindari, and of the right of the talookdars, as holders of a hereditary though subordidate tenure, to participate in the RENT produce of the lands comprising it."

This is the first case I can find decided on equitable principles and it formed the basis of section 8, Regulation V of 1812, which gave a new legal ground for enhancing talukdars. This ran as follows :—

"In case of a dependent talookdar, if the rents of the lands be compared according to the rates payable by ryots or cultivators for land of a similar quality and description, a deduction shall be allowed from the *gross rents* in the adjustment of the jumma of such dependent *talook* at the rate of ten per cent. of the talookdar's profits, or income, over and above reasonable allowance for charges of collection according to the extent of the talook."

Neither the decision nor the Regulation referred to the value of produce of the land in the ordinary sense. They only referred to what the Judges call the "rent produce." It will furthermore be observed that neither the Regulation nor the decision based on it has any bearing on the law of enhancement applicable to ryots. That law provided that ryots, rents should be limited by the perganah or customary rates, while talukdars were liable to pay the full mofussil collections less the customary deductions. It is essential that this distinction should not be lost sight of. To confuse rules of enhancement relating only to talukdari tenures with rules which are applicable to ryoti rents is to do the ryots' interests a grave injury.

24. The next law affecting the Permanent Settlement Regulation was Regulation VIII of 1819, and the effect of this Regulation was considered in Construction 1205 of the Constructions of the Sudder Dewany Adawlat of the North-Western Provinces, which was confirmed by the Calcutta High Court on the 12th of April 1839. In that Construction the Sudder Dewany Adawlat of the North-Western Provinces held as follows :—

"They (that is the Court) remark that under the provisions of clauses 4 and 5, section 18, Regulation VIII of 1819, the landholder must first establish by a suit, either summary or regular, the existence of an arrear before he is at liberty to cancel the lease of an under-tenant; while as regards khoodkhast ryots, they have also the power of immediately paying into court any sum adjudged to be due from them before they can be ejected."

The importance of this decision on the *status* of the non-occupancy ryot before Act X of 1859 will be at once perceived. Its importance lies in the fact that such a ryot could only be ejected for non-payment of rent. As far as I understand, the Bengal Government, in its recent report on the Tenancy Bill, is therefore well within the mark, as far as the law before 1859 stood, when they claim that restrictions shall be put on a landlord's power of capriciously ejecting a non-occupancy ryot. And this view of the law is enforced by abundant evidence of a later date. In the first place it is confirmed by a case decided in 1845 in which the nature of the tenure of a ryot in Bengal was discussed before three Judges of the Supreme Court, namely, Peel, C.J., Grant, and Seton, JJ. Their decision was as follows:—

"On the first ground the plaintiff must be non-suited. The ryot here has a better tenure than a lessee in England, and one not nearly so precarious as that of a tenant-at-will."

25. This decision was followed by a decision of a Full Bench of the Sudder Dewany Adawlut in 1855. In that case the question was, what was the nature of a ryot's tenure in Bengal? The Judges say :—

"The plaintiff has not shown that his vendor, whose rights only he bought, was a holder of one of the tenures excepted in the five clauses of section 26, Act I of 1845, nor does he prove in what particular class of ryots he is included. We therefore consider the plaintiff's claim to possession, without permission of the zemindar, invalid. He bought, as he thought, something: the principle *caveat emptor* strictly applies, and it was for him to look to the certainty of getting a consideration for his purchase-money. The party whom he succeeded had no equivalent to offer: he had merely a right of occupancy so long as he paid his rents; failing to do so, either from inability or from unwillingness, the possession returned to the proprietor, the contract between him and his ryot being no longer in force. Such is

nothing. His property will be seized, be the act sheer plunder or under colour of attachment, and the ryot will find it impossible to get it back. If he should complain to the Magistrate, the zemindar will plead an attachment. If he should appear before the Collector and seek, the release of his property from an unjust attachment, the zemindar will reply that there has been no attachment at all. So that if left without aid to remove his property, he will leave his old habitation a beggar without a pice to support himself or his starving family, and without a bullock or plough or any other means to cultivate any new farm. Thus he is in a state of thraldom to his zemindar, worse than slavery. The only remedy for these things is to declare summary suits and attachments on account of any tenure barred after the resignation of it is filed. No mischief or injury can accrue to the zemindar by the prohibition of summary suit or attachment, as a regular suit is just as effectual to enable him to recover his dues as the honest application of the summary laws and attachment can be; but the evil lies in these enactments being always abused on every occasion when it serves the purpose of the zemindar. They give him a handle to seize a poor fellow's property, and its recovery is about as probable as if it had fallen into the hands of dacoits.

"*Para* 9.—There is no occasion I feel satisfied when so much oppression is practised a when a ryot is known to be meditating the relinquishment of his jote. As the law now stands, he has two alternatives, to remain and bear as best he can a grinding taxation, or to fly a beggar and a vagabond. Such a state of things ought not to be tolerated by a just and benevolent Government; and is it going beyond the point to attribute to it a great deal of one species of crime which prevails all over these provinces, without which the overtaxed poor would find it impossible to feed themselves and to feed their rapacious landlords To enable him to do both dishonest measurement will be resorted to, and the power which enables a zemindar to exercise such a tyranny over his tenants, is therefore a fruitful source of much of the crime which now exists."

32. On account of this and other representations a section was introduced into the Bill which subsequently became Act X of 1859. That section ran as follows:—

"Any ryot or cultivat r who desires to relinquish the lands held or cultivated by him shall be at liberty to do so, provided he gives notice of his intention in writing to the persons entitled to the rent of the lands in or before the month of Jeyte of the Bengal year in which, or of the Fusly year preceding which, the relinquishment is to have effect If he fail to give such notice, and the lands are not let to any other person, he shall continue liable for the rent of the lands. If the person entitled to the rent of the land refuse to receive any such notice, and to sign a receipt for the same, it shall be served upon him by the Collector, on application for such service being made by the ryot or cultivator within the time above mentioned."

No section giving the zemindar a corresponding power to terminate a tenancy by notice was entered in the Bill or ever made law, and this strongly corroborates the position I have explained in the preceding remarks, namely that, except on a few doubtless important points, Act X of 1859 did not really change the old regulations.

33. The British Indian Association in their comments on the Bill noticed the section just quoted and entered a strong protest against it. In section 21 of their letter to the Government of India, dated the 14th February 1859, they wrote as follows:—

"When the ryot is readily invested with the rights of relinquishing his land, equity demands that the zemindar should have the privilege of ejecting his ryot, whether with or without engagement, when reason for so doing exists. Your petitioners are, however, aware of the consequences which this state of things would lead to, and they therefore recommend that no right fraught with such mischief should be conceded to one party to the prejudice of the other."

To this extract I invite special attention. It is a distinct admission by the exponent of the zemindari interest that so late as February 1859 the right to eject ryots at will was not a right claimed by zemindars at large.

34. So far therefore it appears clear that neither the framers of the Act nor the people most interested in Act X of 1859 ever contemplated that the zemindar had any right to put an end to the tenancy by notice. The British Indian Association representing the zemindars of Bengal asked that the privilege of ejectment at will might be conferred as an equivalent for the ryot's right of relinquishment, and this request was refused. It was during a later period when the preamble of Act X of 1859 had been swept away by the repealing Act, when the history of the old Regulations was forgotten, and cases were decided by officers imbued with the spirit of English law, that by degrees the theory was established that under Act X of 1859 and Act VIII (B.C.) of 1869 the zemindar could treat a tenant in Bengal as a landlord could treat a yearly tenant in England, and was

entitled to dispossess him not on a half-yearly notice, but on what was called a reasonable notice to quit.

In a previous note I said in reference to this question that—

"Whoever enquires into this last attempt of the zemindars to extend their powers of ejectment will be astonished to find how modern it is. The first recognition I can find is that given at page 548 of XXII Weekly Reporter in a case in which the judgment was delivered in 1874 by Phear and Morris, JJ."

35. I have heard it urged that whatever the position may have been under the Regulations, still as the Judges have decided under Act X of 1859 and Act VIII (B.C.) of 1869 that a ryot can be ejected with notice, it is impossible for the Legislature to return to the old state of things. This seems to me a monstrous proposition to maintain. Surely the fact that for a few years past a certain number of decisions have set up an erroneous principle seems not of such importance as to bar a return to the law of the land as declared by the Legislature and the courts for a period of upwards of sixty years. We have not to deal with the interpretation of a statute which has lasted for a century or for a long period, and there ought to be little difficulty felt by the Legislature in restoring things to the position which, under a correct construction of the law, they occupied up to 1874.

A point somewhat similar to this was brought before the House of Lords in the case of the trustees of the Clyde Navigation against Laird and Sons, in which Lord Watson in delivering his judgment said—

"I have only to add that in my opinion such usage as has in this case been termed *contemporanea expositio* is of no value whatever in construing a British statute of the year 1858. When there are ambiguous expressions in an Act passed one or two centuries ago, it may be legitimate to refer to the construction put upon these expressions throughout a long course of years by the unanimous consent of all parties interested, as evidencing what must presumably have been the intention of the Legislature at that remote period. But I feel bound to construe a recent statute according to its own terms, when these are brought into controversy, and not according to the views which interested parties may have hitherto taken; and in determining the true import of such a statute it appears to me to be quite immaterial to consider whether it was passed in the year 1858 or in 1883."

36. If then, as has been declared in the House of Lords, a wrong interpretation of a statute for twenty or thirty years would have very little effect on them in deciding as to the purport of the statute, surely there can be no reason why this incorrect interpretation of Act X of 1859 should not now be set right by the Legislature and the rights of under-tenants and occupiers be correctly and carefully defined. From the time of the Permanent Settlement Government has constantly asserted a determination to legislate for the people of the country according to their ancient rights and customs. Is it to be debarred from redeeming its often-repeated pledges because of decisions manifestly wrong, which have sapped all the long-established rights of the tenants?

This then appears to me to be the policy which should be followed in any Tenancy Act, and so far as the provisions of the present Bill are in accordance with that policy I approve of them. So far as they depart from it by injuriously affecting the position of under-tenants and of the cultivating ryots, I dissent from them. The aim and object of the Government should be not to create new relations between landlord and tenant, but to restore and clearly define the old; for the old are not only the best, but are what the people are morally and equitably entitled to possess. It seems to me that the recommendations of Mr. Rivers Thompson in his report of the 15th September last tend towards that end, and I consider them fair and just to both parties.

37. I pass on now to notice a few of the more salient portions of the present Bill. I see that some doubts have been raised as to whether the Secretary of State for India in Council will be bound by the Bill. I trust that if there is any doubt on this point it may be removed. At the same time I must say that I do not hold the opinion that, unless the Secretary of State is expressly named in the Act, he will not be bound by it. This view seems to me to rest altogether upon a misconception of the position of the Secretary of State in this country. He is exactly in the position of the old East India Company, and from the very beginning the Company was bound by the Regulations and Act X of 1859, though you may search in vain to find its name in them.

38. There is some danger in the attempt to define the different kinds of tenures. The circumstances of the country are so varied, that it is very difficult to obtain a perfect definition; and if the definition turns out to be imperfect, serious inconveniences must of necessity ensue. This is not a new difficulty, nor can I see any reason why the present framers of the Bill could be blamed for not doing what we never have been able to do since the time of the Permanent Settlement. None of the old Regulations undertook to define the different kinds of tenures, or to distinguish them from one another, nor did Act X of 1859, nor Act VIII (B.C.) of 1869. I am strongly of opinion that after all it might be a much wiser course to leave this matter to the courts. It has been left to them since 1793 to decide what is and what is not a ryotti tenure. I think it would be as well if the power is allowed to remain with them.

39. I observe that it has been objected to section 26, sub-section 2, that a presumption in favour of an occupancy right is contrary to the spirit of the Indian law, and unjust. I confess I can see nothing wrong or extraordinary in this presumption if viewed with reference to the law of property in India, but if the English standpoint is taken, namely, that a ryot has nothing but what he gets from his landlord, the conclusion would of course be different. We are not however warranted in applying English theories to the construction or interpretation of an Indian Tenancy Act. In Bengal, the tenantry have always had rights in the soil not *under*, but *adverse* to, the zemindar. The right of the Bengal ryot to his holding, while he pays a fair rent, is a right *anterior to*, not a right carved out of, that of the zemindar. This fact is, by the common law of this country, indisputable. Why then should it be presumed that these rights, which we know to exist, do not exist, and that the tenant holds only from year to year. It is fair to presume that they do exist until the contrary is proved. The contention adverse to this presumption becomes more unreasonable when we are told that the persons holding under a statutory title form the majority of tenants. Presumptions of a somewhat similar nature are recognised by the Regulations. By section 60 of Regulation VIII of 1793, no landlord in Bengal could demand a higher rate of rent from a resident ryot unless he proved that the ryot had held for three years under the pergunnah rates. Under section 51, Regulation VII of 1793, no zemindar could enhance the rents of a talook unless he proved that it was liable to such enhancement by the custom of the country. If this is the spirit in which the founders of the Permanent Settlement legislated, I do not think there is any objection to extending the protection of a reasonable presumption to ryots who, as a class, are much less able to protect themselves than talookdars. Surely it is not intended that when no such tenancy exists the presumption should be that all ryots hold from year to year In the North-West, it has been decided that there is no presumption that a particular tenant's holding is not transferable without the zemindar's consent. (Meer Hedayat Ali *vs.* Baboo Lall Singh, 1869, page 37), and this is a much stronger presumption than that now proposed.

40. In regard to occupancy tenures I think the proposal to render them transferable in Bengal is unobjectionable. Under the law before Act X of 1859 the tenure of khudkast or kadimi ryots could be transferred without the consent of the zemindar. In addition to these there were many other holdings transferable by custom. I may note as examples the jotes of Rajshahye and the guzashta tenure of Shahabad. When Act X of 1859 became law, the highest tenure known to the law was a right of occupancy, and in course of time this became the general description covering all these more ancient tenures. It is, I think, a mistake to suppose that the custom of selling occupancy tenures has arisen since Act X of 1859. I believe that many of the tenures now sold as occupancy holdings are old tenures transferable before that Act ever came into existence. No doubt the custom has grown since 1859. It now exists in all districts of Bengal, and should, I think, be recognized and allowed with such safeguards as will prevent injury to either landlord or tenant At present, where the custom exists, the zemindar is powerless to object to the purchaser, and may be saddled with a ryot of the worst character. The ryot, on the other hand, may sell to any one, and hence it may and will happen that he will sell his occupancy right to his money-lender and remain as a sub-tenant on the land. If such sales were limited to *bonâ fide* ryots on the one hand, and

subject to objection from the zemindar on the ground that the purchaser was not a cultivating ryot or a notoriously bad character, they would be unobjectionable. Nothing further seems necessary for the protection of the rights of either party, and I would not go beyond it. For this reason I deprecate allowing the zemindar the right of pre-emption or the right to levy a heavy fine on transfer or a wide power to object.

41. In regard to the limit of 20 per cent. proposed to be placed on enhancement, I have very little to add to what I wrote in my last note. I then pointed out that 25 per cent. of the gross produce was in my opinion a rack rent, and I added that the rent in England was not more than one-eighth of the value of the crops. I also pointed out that the Eastern Landholders Association proposed one-fifth as the highest limit of enhancement which the zemindars thought proper to demand. There is ample material to corroborate this view in the litigation which arose in Nuddea after the passing of Act X of 1859. In the celebrated case of Hills *vs.* Ishore Ghose, W.R. 1864. I find that he sued to enhance the rent of a ryot having a right of occupancy, and succeeded. There the Judges said "according to either of the calculations the rent would amount to Rs. 1-3 a beegah, without taking fractions of an anna. We think that the amount is a fair rate of rent for the *matan* lands, and that plaintiff is entitled to have the rent of the matan lands held by the defendant enhanced to one rupee a beegah. *This is less than one-sixth of the gross proceeds.*" The rent was decreed, but the amount was never realized. No tenant could or would pay it.

42. There is still another case illustrating the great danger of allowing zemindars to enhance to 20 per cent. of the gross produce. During the settlement of the Jellamootah estate a series of experiments were made with a view to determine the proportion of rent to gross produce. The following is the result in tabular form :—

Statement of produce in connection with the proposed re-settlement of the Majnamuta Estate.

	Names of Pergunnahs.	Average outturn of produce per beegah, ascertained in maunds of paddy.	Average price per maund of paddy.	Total value of the produce, including straw.	Deduct expenses of cultivation.	Deduct proposed average rate of rent.	Total deduction.	Balance left to the ryot as net profit.
1	2	3	4	5	6	7	8	9
		Mds. s. c.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
1	Majnamuta ...	8 31 4	0 12 0	7 1 4	2 8 0	1 11 0	4 3 0	2 14 4
2	Doro Dumnan ...	7 32 0	1 0 0	9 4 9	5 0 0	2 2 0	7 2 0	2 2 9
3	Narnamuta* ...	.....	.....	.....	.....	1 6 6	.....	.....
4	Kusba Hidgellee ...	9 20 0	0 12 0	7 11 0	3 6 0	1 14 0	5 4 0	2 7 0
5	Balijora ...	10 31 0	0 12 0	8 5 0	2 8 0	1 11 0	4 3 0	4 2 0
6	Sarifabad ...	8 29 0	0 12 0	7 0 9	2 8 0	1 12 5	4 4 5	2 12 4
7	Kismut Pataspore ...	8 3 8	0 12 0	6 9 0	2 8 0	1 5 6	3 13 6	2 11 6
8	,, Shipore ...	6 36 0	0 12 0	5 10 9	2 8 0	1 11 0	4 3 0	1 7 9
9	Datta Khoroi ...	9 20 0	0 12 0	7 10 0	2 8 0	1 19 6	4 1 6	3 8 6
10	Amirabad ...	8 32 0	0 12 0	6 13 0	2 8 0	1 2 3	4 4 3	2 8 9
11	Majna Nyabad ...	8 20 0	0 12 0	6 14 0	2 8 0	1 9 0	4 1 0	2 13 0

* No experiment was made in Narnamuta. The rates were fixed by comparison with those prevailing in the neighbouring pergunnahs.

From this table it appears that the proportion of rent to gross produce was 25 per cent. What was the result? Government was unable to recover the rents. A considerable permanent reduction amounting, I understand, to more than 10 per cent. in the rental was effected, while it was found necessary to remit arrears to the extent of two and a half lakhs of rupees. In the face of these results it can hardly be doubted that one-fifth of the gross produce is more than the ryots of this country can afford to pay. I have heard it stated that in certain districts the cultivators pay a higher money-rent than one-fifth of the gross produce taken in staple food crops; and where there is garden cultivation, or where crops of exceptional value are grown, this may be true. But specially valuable crops cost a great deal to grow, and a failure of the crop means the ruin of the ryot. I am no advocate of rents graduated according to

the character of the crop, nor do I think that any country can prosper where rents are regulated, not by soil quality, but by its produce. Furthermore, if we are to refer to Mahomedan law, it may be observed, that while some maintained it to be allowable to take half of the produce as *kheraj*, the better opinion was that not more than a fifth should be taken. If a fifth was considered equitable in olden times, when population pressed but lightly on the soil, that proportion must be a rack rent to-day. As time goes on, as population increases, and the productiveness of the soil grows less, the proportion of one-fifth will become impossible of payment. In former times there was always a difficulty in determining the amount of land held by the cultivators. Then, as now, they steadily opposed any measurement of their holdings, and I think it is the general opinion that they then cultivated and do now cultivate more land than they admit.

43. I think, there is some reason to believe that the present rents are too high. This is also the opinion of a body which manages estates the rent-rolls of which amount to 57 lakhs of rupees. I refer to the Board of Revenue. In the Board's report for 1883-84, there is the following paragraph:—

"This appearance of bad collections is to be explained by the system on which zemindari accounts are almost invariably kept by private proprietors. While one set of rates is entered as payable in the accounts, another rate is actually paid. The full rent which is entered in the zemindari books may be paid in the most favourable years, but as a rule a zemindar is willing to receive and be satisfied with a rental considerably below the amount of the full demand as shown on his books. The difference is debited to a *hajat* account, or it is merely shown as a balance against the ryot, or in some cases it is kept alive by instalment bonds executed by the ryot. Almost every estate under the Court of Wards comes under its management with large unrealizable balances, and it is found that even the current demand is not realizable in spite of all the exertions of the managing establishment. Year after year the percentage of collections for wards' estates is less than the current demand. The result has generally been considered unsatisfactory, but no other result can be shown without oppressing and harassing the tenantry. It is no exaggeration to say that a fair and liberal zemindar does not collect more than 75 per cent. of his nominal rent-roll on an average of years. There is good reason for believing that in some of the eastern districts the average of late years has not exceeded 60 per cent."

The Members of the Board of Revenue, who manage more property than any zemindar or agent in Bengal, consider that not more than 90 per cent. of the rental in estates coming under their management can be realized "without oppressing and harassing the tenantry," or in other words, the present rent-rolls are at least 10 per cent. too high, and cannot be realized.

44. If this be so, and I can see no reason to doubt the experience of the Board, I think the Government of India should pause before it grants to zemindars any further facilities to enhance or any summary method to realize the already excessive rents. I believe it would be far better for both zemindar and ryot if the rents were not so high. The former would not lose anything by giving up what he cannot now realize without some oppression, and he would have the sympathy of every right-minded person in enforcing his rights against such ryots as could but would not pay. It is proposed by section 41 of the Bill to allow the existing rent to be enhanced up to 25 per cent. by mutual agreement. I confess I dislike this proposal. I do not conceive that any person, looking at the nature of the agreements, of which I have already given extracts, will contend that there is any such thing as freedom of contract between landlord and tenant in Bengal. The ryot submits because he cannot help it. It is not reasonable to suppose that a cultivator in this country, who is strongly attached to his holding, would, if he could help it, agree to give up his right of occupancy in the soil, pay all the taxes which may be levied from his landlord, although this is expressly prohibited by law, and fetter himself by, to him, novel restrictions. Yet numbers of the ryots have done it. In the same way they will agree to any enhancement to pay any amount, trusting that the obligation will never be enforced, or they will by some means or other be able to avoid their liability for the increased rent. If enhancement is at all allowed out of courts, then the amount should be so small as will neither tempt the landlord to demand nor the ryot to agree to pay more than is reasonable, such as ten per cent. on the existing rent. From this point of view I consider that full justice to the zemindars is met by the proposal of the Bengal Government that enhancements out of court should not exceed 2 annas in the rupee of the former rent.

45. These objections are of minor importance in comparison to what I consider the great defect in the Bill. It gives no protection to that great mass of ryots who have not obtained a right of occupancy in the soil. Before Act X of 1859 there was hardly any distinction between resident and non-resident ryots in Bengal. Both paid at the customary rate; both were safe from eviction, unless for non-payment of rent. In the draft of Act X of 1859, the present rights given to occupancy tenants, were granted to all resident ryots. This limitation was consistent with the Regulations of the North-West Provinces, which recognized the distinction between resident and non-resident ryots; but was inconsistent with the statute law of Bengal, which admitted no such distinction. This was not all. When the Bill was circulated, the Board of Revenue in the North-West said that it was a fallacy to regard every "resident ryot and cultivator" to have a right of occupancy in that province, and recommended the 12-years' rule. This was adopted by the Select Committee, who said:

"The laws in force speak of "*khoodkasht* ryots" as possessing rights of occupancy, and in some places the word *khoodkasht* seems to be considered as synonymous with "*resident*." Resident was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy, and it appears after much enquiry it was prescribed by an order of the Government of the North-West Provinces in 1856 as most consistent with general practice and recognised rights that a holding of the same land for 12 years should be considered to give right of occupancy. We have followed this precedent, and altered the section accordingly"

Regulation LI of 1793.
Regulation VIII of 1819.
Section II, clause 3; section 18, clause 5.

46. It was unfortunate for the ryots of the Lower Provinces of Bengal that the law and precedents of those Provinces were not followed instead of the order of the Government of the North-West Provinces. Starting with Regulation 51 of 1793, which had no reference to Bengal, the Committee drew a distinction between resident and non-resident ryots which has never been recognised by the law in force in the Lower Provinces. This was the first mistake. The second was more serious. The North-Western Provinces is (with the exception of Benares) not permanently settled, and the Government officers from time to time when settlements are revised record what they consider the rights of the tenants. In 1856 Government decided on taking 12 years' cultivation as a test of the right of occupancy, but this could in no wise affect the rights of tenants under the Permanent Settlement in the North-West. Much less could it be said to be a guide for legislation in regard to Bengal. Unfortunately this precedent was followed, and the resident ryot, who admittedly was before Act X of 1859 protected against arbitrary enhancement, was after that Act passed liable to pay whatever his landlord might demand. After some time it was decided that he was also liable to ejectment on notice to quit, and now he has no protection against the imposition of a rack-rent or arbitrary eviction.

The provisions of the present Bill in regard to this class of ryots are to my mind extremely imperfect and inadequate. Justice requires that these ryots should be placed in the position they were in 1859. Under the present Bill there is nothing to prevent a zemindar in the future from rack-renting and ejecting them.

If the Legislature, while professing the right to interfere on behalf of the ryots, does not consider it expedient to give them what in my opinion is only fair justice and restore them to the position they held in 1859, the least it can do is to give them substantial compensation for disturbance when after agreeing to pay a fair rent they are arbitrarily evicted by the zemindar. The Government of Bengal proposes to check the capricious exercise of power on the zemindar's part by awarding compensation for disturbance up to a maximum of three years' rent. That I consider an inadequate check.

47. In connection with the present Bill the recent land legislation for Ireland has been referred to, and there is no doubt it deserves the most serious consideration. The claim of the tenants in Ireland to compensation for disturbance was weak in comparison with the claim of the ryots in Bengal, and yet the former obtained compensation on the following scale:—

Where the rent is thirty pounds (three hundred rupees) or under, a sum not exceeding seven years' rent; when the rent is above thirty pounds a sum not exceeding five years' rent.

Where the rent is above fifty pounds and not exceeding one hundred pounds (one thousand rupees) a sum not exceeding four years' rent.

Where the rent is above one hundred pounds and not exceeding three hundred pounds (three thousand rupees) a sum not exceeding three years' rent.

Where the rent is above three hundred pounds and not exceeding five hundred pounds (five thousand rupees) a sum not exceeding two years' rent.

Where the rent is above five hundred pounds a sum not exceeding one year's rent.

This is the scale which Parliament considered fair and equitable, although the legal claim to compensation was weak. Here the claim is strong. In Ireland the tenants had no legal ground for saying "our rights were such and such and we have been deprived of them." Here the ryots have been unwittingly deprived of their rights by recent legislation and recent decisions of the Courts, and I think they may fairly ask, if those rights cannot be restored, as they should, that compensation on the same or a higher scale should be granted to them. If this be not done,—if the right to hold their land as long as they pay a fair and equitable rent be not secured to all cultivating ryots,—then I think it better for *them* that the Bill should be abandoned and matters allowed to remain as they are. The force of circumstances might in a few years' time necessitate legislation of a far more comprehensive nature in the interests of the tenantry than any now proposed by the Government of Bengal.

J. O'KINEALY.

Reg. No. 10570C—300—30-12-84.